

Mixed Marriage in the Lebanese Law

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According to Lebanese law, a marriage is characterized as mixed when it is contracted between two Lebanese of different confessions or between a Lebanese and a foreigner: The legal system regulating marriage is determined by confessional affiliation for the Lebanese and by national affiliation for the foreigners.

The marriage system in Lebanon is confessional and closed: In the absence of a civil law for marriage each confession has its own laws applied by its special courts on its subjects. Since the beginning of the past century, especially with the growing phenomenon of emigration, the Lebanese opened up to each other and to the world, which multiplied the chances of meeting, loving and marrying individuals from other confessions and other countries. The legal structure, however, could not open up at the same pace. Confessions were adamant about establishing equal legal status, where each confession insisted on having at least equal legal rights with all the other confessions, since all of them were considered minorities.¹ Citizens basic rights – especially equality inside and before the law – did not get the same attention.

The legal autonomy enjoyed by each and every confession created tension between the various confessions

as well as between the confessions and civil authority because every religious or civil authority sought to expand the scope of its competence. This tension is apparent in conflicts that arise in mixed marriages. Such conflicts require interference by the general committee of the Court of Cassation (Supreme Court), competent to resolve such arising conflicts. In this context, matters of justice between citizens take a back seat with respect to procedural considerations and public space becomes narrowed, resulting in tension between national and confessional affiliations. This tension has historical roots and has been enhanced by lost opportunities to build a state that guarantees the rights of its citizens.

Duality of Affiliation to State and Confession

Equality between Sects:

The Ottoman Sultanate ruled Lebanon and the Arab region for a period of 400 years during which it implemented Shari'a law based on the Hanafi School of Jurisprudence in handling issues of personal status.² In dealing with non-Muslims, Islam³ distinguishes between the House of War, which is the land of the enemy, and the House of Peace, which is the land of Islam. Non-Muslims

welcomed in the latter must be peaceful. This welcoming was legally recognized by the Muslim promise of protection (*dhimmi*). This obligation of protection is an individual or group contract signed between the Islamic state and the followers of recognized confessions, particularly various sects of the Christian and Jewish religions. This contract grants the sects in question protection for their lives, property and freedom in exchange for a specified tax paid to the state. The tax was the price of protection and for exemption from military service. The protection contract was a progressive concept at the time, respecting the freedoms of belief and difference. Today, however, it evokes among minorities the memory of humiliation and insecurity concerning one's destiny, because this destiny depends on the ruler and because it recalls discrimination against them in the periods of persecution. Relations with the Ottoman Sultanate remained based on religion until November 3, 1839, the date of issuance of the first edict stipulating 'equality between subjects of the state before the law. This edict was considered the introduction to citizenship in its modern sense, i.e. the adoption of the national identity instead of the religious one.

This edict was later (February 18, 1856) consolidated by another edict known as the 'Hamayouni Line,' which defined the nature of protection granted by the Sultanate and determined the beneficiaries of this protection. Article 1 of the edict recognized the basic rights of citizens, including freedom of belief. Article 2 recognized and guaranteed the rights of non-Muslim confessions.⁴ This edict as well as the previous one constitute the foundation of the Lebanese system.

Equality between Citizens and the Rights of Groups:

With the establishment of the national state in Lebanon, a system based on equality between citizens as well as between sects as groups was established. The purpose of the latter was to guarantee freedom of belief. But the general climate and political balances promoted the rights of the confessions at the expense of those of individual citizens and impeded the conceptual and practical aspects of citizenship.

The principle of the equality of the sects constituted a problem, since nation states, generally, were established, whether in the East or the West, based on the rule of individualism. According to the ideology that laid the foundations of modern nation states, individuals are the owners of rights.⁵ The principle of equality between individual citizens, whose joint will is the source of sovereignty is one of the pillars of the democratic modern nation state.

The issue of minorities was also raised in the West but from a different angle that does not affect the rights of citizenship: A citizen can be a member of the ethnic

minority if he/she so wishes, and this is one of his/her rights as a citizen. This is why groups try to be more appealing to individuals where each group wants people to join it. However, in Lebanon, affiliation to a confession is a compulsory natural identity required for acceding to the right of citizenship, regardless of the citizen's will. Consequently, there is clear rivalry between confessional and national affiliations, a competition that is generally won, especially in times of crisis, by confessional affiliation, even in issues that require that national loyalty be placed above all.

What is the destiny of the individual citizen's rights? In Lebanon, balance was theoretically established between the rights granted to individuals and those guaranteed to confessions. This solution, however, was not enforced, due to the lack of the appropriate legal mechanisms. This failure contributes to the strengthening of the confessions' powers and causes a rift between citizens and state. The frailty of the system is particularly apparent in the failure to issue a personal civil status law. The bad management of the multiplicity and diversity that characterize the Lebanese reality preempts interaction and hampers equality between citizens, a situation from which women particularly suffer.

In parallel, citizens developed a series of legal tricks that are highly efficient when carried out, in silent complicity with officials and fellow citizens. Such tactics facilitate matters of practical life and enable them to break some of the rules of the hampering 'religious' system. As a result of the deviation of the law from its goal and function as an organizer of people's relations according to the requirements of justice, it was turned into an enemy driving people away from it and encouraging them to circumvent it.

The Lebanese experience is a special model, a globalization on a limited scale, where multiculturalism coexists by reason of diversity, within a structure that produces laws that in the name of particularity reduce interaction (mixing) to the minimum. This model resembles the world today where the boundaries between the people wane within the structure of an official system seeking to preserve its component cultures.

I will demonstrate in this study the conflict that emerges in connection with mixed marriages and the principles of legal solutions, in the most widespread cases, in two sections: mixed marriage contracted in Lebanon and mixed marriage contracted abroad, and the laws of competence and solutions in case of litigation, for each of them.

First: Mixed Marriage in Lebanon

1. The Confessional Structure

Mixed marriages in Lebanon have to be officiated by a

confessional authority.⁶ Any marriage contracted in Lebanon before a civil authority is considered void.⁷

Lebanese society is constituted of various confessions: Many of these confessions are acknowledged and today they have reached 18, each of which has been granted the right to set and implement a special personal status law independently of civil authority. There are unacknowledged confessions in Lebanon too, for which the authority promised by virtue of Decree No. 60, Regulatory Law, (R.L.) endorsed on March 13, 1936 to support a public civil status law by which these confessions would abide and by virtue of which civil courts would be entrusted with settling litigation. This group was called the 'confession' of public right, i.e. confession No. 19. The public right confession was supposed to gather whoever is not affiliated to an acknowledged traditional confession and whoever wishes that the civil authority be the sole source of legislation, whether one is a believer or a non-believer, in a way that this confession would be an entry to full citizenship. It is worth noting that a Lebanese is compelled to be affiliated to a confession and at birth acquires the confession and nationality of his/her father.

Every traditional confession drafts its laws and implements them in its own courts. The state respects the principle of neutrality regarding the various confessions and does not interfere with their internal affairs, neither at the level of legislation nor at the level of confessional judiciary, except in cases of contradiction with the public order. The state, however, does not endorse any civil law regarding the personal status of the public right confession. This strands the Lebanese on their confessional isles, and leaves a category of the Lebanese, like members of the Baha'i confession, in a legal vacuum, i.e. without a personal status law. It also leaves the public arena, the place of interaction and free mixing, closed. This is a major shortcoming of our legal system.

Furthermore, the absence of a personal status civil law circumvents, in particular, the application of the general principles of handling conflicts between laws, in time and place, not only at the national level but also at the international levels. Thus, it limits the chances of interaction and, therefore, of the progress of the Lebanese legal system.

The absence of a general civil personal status law leaves the people's options in Lebanon limited to the confessional marriage contract. Marriage can also be considered mixed after its contracting if one of the two spouses changes his/her confession or acquires a new nationality. The possibility of changing the confession or nationality grants a limited margin of freedom to the spouses, to 'place' their marriage within the legal system that suits them the most.

2. The Marriage Law

Marriages in Lebanon are contracted before the authority of the confession to which the groom is affiliated, unless the couple agree to choose the authority of the confession to which the bride is affiliated.⁸ Consequently, marriage abides by the marriage law of the authority before which it is contracted.

The confessions' stance on mixed marriages vary. Some of them oppose it while others set conditions for it, even within confessions of the same religion. For instance: The marriage of a Catholic man to an Orthodox woman is barred by the law of the Catholic Church, if not authorized beforehand by the competent authority according to Articles 813 and 814 of the laws of the new oriental churches. This legal stand is against the policy of openness promoted by the Christian churches within the framework of the ecumenical dialogue, in which people massively participated. This prodded the Catholic and Orthodox Bishops' Council to issue a joint document facilitating the procedures regarding mixed marriages.⁹

It is worth noting that the Catholic Church is the only Christian church that allows its subjects to marry unbaptized individuals after the authorization mentioned in Article 804 is granted. The Antioch Orthodox Church authorizes the marriage of two persons of different confessions within the same religion, but prevents marriage between two persons of different religions.¹⁰ The Evangelical Church also stipulates that the two marriage partners should be Christian, one of whom being Evangelical.

As to the Islamic religion, it does not set conditions for the marriage of two persons of different confessions within the same religion, and authorizes the marriage of a Muslim man to a woman adherent of another revealed religion, and allows her to keep her religion and exercise her religious rites. However, the marriage of a non-Muslim man to a Muslim woman is considered illegitimate.

This legal environment penalizes free mixing, while social reality, the actual interaction between the Lebanese and the nature of human relations, encourage it.

3. Judicial Competence

In principle, the civil court enjoys competence to examine lawsuits when the confessions of spouses are different because it represents the public courts. However, this rule has many important exceptions in the articles pertaining to marriage and its outcome, since the court enjoying competence to settle litigation resulting from marriage, including mixed ones, is the court of the authority before which the marriage was contracted, according to Article 14 of a law endorsed on April 2, 1951,¹¹ despite the fact that the confessional courts are

specialized in examining the personal status cases of their members only.¹²

Civil courts exclusively have competence to settle litigation resulting from a marriage contracted between two foreigners or a foreigner and a Lebanese, provided that the foreigner abides by the civil law in his country Decree No. 109, R.L. endorsed on May 14, 1935.¹³ Jurisprudence of the Court of Cassation (Supreme Court) decided a long time ago to grant competence to the civil court that applies on the foreigner his/her national law. If a Lebanese man marries a French woman abiding by the civil law of her country, then the civil courts are competent to settle litigations resulting from their marriage and to enforce the marriage law. However, there is a trend in the courts' jurisprudence that aims at expanding the scope of competence of confessional courts.¹⁴ For example, such courts may regain competence from civil courts upon a foreigner's acquirement of the Lebanese nationality at a date previous to filing the lawsuit in a bid to subject him/her to the applicable confessional court.

4. The Conflict of Laws

Every confessional court seeks to expand the scope of its competence: In the context of mixed marriages, there arises conflict when two or more courts assume competence. I will explain one of these cases which is an outcome of positive conflict between two courts, where every party was seeking to settle the lawsuit in the court of the authority that serves his/her interests or rights. This is another example of confessional courts taking advantage to expand their scope of competence.

Positive Conflict:

A Maronite man and an Orthodox woman married according to the law of the bride's confession. They had two children. Then discord broke out between them. The mother consulted the Orthodox Court where the marriage was contracted in order to request the custody of the children,¹⁵ whereas the father consulted the Maronite Court to make a similar request. Every court was considered to have the authority to settle the litigation: The first because the marriage was contracted according to the law of the Orthodox confession and the second because it represents the confession of the father. The conflict was settled by the general committee of the Civil Court of Cassation (Supreme Court). In principle, jurisprudence agrees that the court before which marriage was contracted is the authority to examine the problems resulting from this marriage, including custody. Thus, it is natural that the Orthodox Court, in this case, be considered as having the authority to settle the litigation. However, the court of the husband's confession was considered to have the authority because both parties had not signed a commitment in writing to abide by the laws of the Orthodox Church when they contracted

their marriage (Article 15 of a law endorsed on April 2, 1951). The court refused to consider that their agreement on the marriage contract before the court of the wife's confession also expresses their agreement to abide by the laws of this confession.

a. Changing Confessions and its Effect on the Legal System Governing Marriage

Article 9¹⁶ of the Lebanese Constitution and Lebanese law in general guarantee freedom of belief and describe it as absolute. This guarantees freedom of belief and the freedom to change one's belief as well. This is why a citizen has the right to change his/her belief and, therefore, his/her confession under the protection of the law and without embarrassment. It is a personal matter. However, in order for that change to be valid, it should be registered in the personal status register,¹⁷ which entails a full changing of the personal legal system. An Orthodox who embraces Islam, particularly the Sunni confession, must have his/her personal status system changed starting from the date of transfer from the register of the Orthodox system to the register of the Sunni system.

However, confession is often changed outside the framework of the freedom of belief, to undermine the rules of jurisdiction, or simply with the aim of changing the legal system by which one must abide. It can be an attempt to trick the system and elude the obligations one must assume by choosing to be affiliated to the confession whose law best serves one's interests. If a confession is changed with the agreement of all the concerned parties in a way that preserves their rights, this change entails legal results that undermine the rules of jurisdiction, though such rules are considered an integral part of the public order. But, if a confession is changed by one party and this change affects the rights of others, the law interferes and insists that rulings remain in accordance with the previously contracted marriage.

When both Spouses Change their Confession

Article 23 of the Decree No. 60, R.L. endorsed on March 13, 1936 stipulates in its second paragraph:

If both spouses change their confession, their marriage as well as the documents or obligations pertaining to personal status become subject to the law of their new system, starting on the date their relinquishment of their confession is registered in the personal status registers. However, the legitimate children cannot be stripped of their legitimacy in this case by the simple fact that their parents relinquished their confession.

It is known that Catholic confessions do not recognize divorce and do not void or cancel marriages except exclusively in cases specified by the law. If a Maronite man, for instance, married an Orthodox woman before the Court of the Maronite Church, and discord broke out between

them, the Maronite Court has the authority to examine the litigation according to its law which is very strict. If both parties agree to end this marriage, they may succeed if both convert to another confession, that both decide to embrace. They can choose to adhere to the Greek Orthodox or the Syriac Orthodox confessions, both of which authorize divorce. The two of them can file for divorce before the court of the new confession and obtain a divorce. Thus, they find a leeway to change the rule of legal and judicial jurisdiction that applies to them simply by amending one personal element. Their maneuvering is protected by the rights of freedom of belief and freedom of the will. Even if one of the two changes his/her mind later on and confesses that their maneuver was only meant to trick the law, the courts do not take such a confession into consideration.

When One of the Spouses Changes his/her Confession

If one spouse changes his/her confession after the marriage, (and usually it is the husband who does so) this change does not affect the marriage system or the rules of jurisdiction, since the authority before which the marriage was contracted remains competent to deal with conflicts resulting in its course.¹⁸

If a couple belongs to a confession that does not condone divorce, such as the Catholic sect, and the husband wants to divorce his wife, and she does not agree to the divorce, the husband may change his religion and become a Muslim (Sunni or Shiite) and get the divorce. Thus, the husband becomes capable of contracting a new marriage, with the former one still standing. In this case, changing confessions does not legally affect the system of the first marriage. That marriage remains subject to the marriage law before which it took place. Article 30 of a law endorsed on April 2, 1951 stipulates that "if one spouse changes his/her confession, the marriage and documents pertaining to the personal status system remain subject to the law before which the marriage was contracted and by which the marriage documents were drafted." Jurisprudence is clear on this issue.¹⁹

Thus, changing confessions for the husband has its outcome in the future and the husband becomes subject to the laws of his new confession: A husband who once was Christian and therefore faces prison if charged with polygamy, becomes legally capable of marrying another under the cover of his new personal law. As for his first marriage, it remains standing since changing religions is not a reason for divorcing or canceling the first marriage. The first wife remains 'tied' and incapable of seeking a new personal or family life. The court of the husband's new confession becomes the authority having jurisdiction to settle litigation resulting from his new²⁰ marriage.

This shifting by the husband from one confession to another, however, creates legal problems for his family (ies) and a problematic issue for jurists, where the matter of inheritance is concerned. After lengthy examination, the general committee of the Civil Court of Cassation (Supreme Court) finally settled for considering that a second marriage does not grant the second wife and her children any right to inheritance, and the first family remains the sole rightful heir.²¹ The court of the authority before which the first marriage was contracted remains the one authorized to examine the matter of inheritance. The court justifies its stance by virtue of Article 23 of the Decree No. 60, R.L.; also by the recognition that the first marriage was based on mutual consent of the two parties to abide by the laws under which the marriage was contracted.

b. When a Foreigner Residing in Lebanon Changes Religions

Foreigners residing in Lebanon abide by Article 9 of the Decree No. 8837 endorsed on January 15, 1932, stipulating that the department for the personal status of foreigners must set up a special register for them in which it should register all facts unforeseen and pertaining to personal status, including the changing of confession, by virtue of Article 41 of the law endorsed on December 7, 1951. In a decision taken by the second Civil Court of Cassation (Supreme Court) No. 4 dated March 9, 1981, Article 41 includes compulsory substantial rules that must be respected for legal effects to be applicable.²²

c. The Effect of the Acquisition of a New Nationality on the Marriage System

Article 19 of a law endorsed on April 2, 1951 stipulates that "changing nationality on a date subsequent to the date of marriage does not introduce any amendment to the rules of the law according to which the marriage was contracted."

The rule set by this article, originally mentioned in a law applied to Christians, constitutes a general rule to be respected with regard to the Islamic religious courts too because there are no contradicting texts regulating this legal principle in Islamic law.²³

It is worth noting that this rule has not been applied to foreign women who acquire the Lebanese nationality on a date subsequent to the date of their religious marriage, as mentioned before. However, it has been applied to Lebanese couples who marry in Lebanon before confessional or religious authorities, register their marriage in the department for the personal status of foreigners and travel, for instance, to Canada where they live, get divorced before the Canadian civil authority and then one or both partners of the marriage return to legalize the divorce. Such a divorce is considered worthless by the

Lebanese courts. A couple is legally required to get its divorce from the authority before which the marriage was contracted. Otherwise, if one of them remarries, he/she is liable to prosecution on charge of polygamy unless the one remarrying is a Muslim man.

5. Issues of Inheritance

According to religious rule and civil law, Muslims and Christians cannot inherit from each other.²⁴ This rule causes great concern and instability in the case of mixed marriages: In case the Muslim husband dies, his Christian wife does not inherit him, and if the Christian wife dies, neither the husband nor the children inherit her, at least not the minors because they follow the confession of their father.

This is why couples of mixed marriages try to go around the restrictions of religion by resorting to alternative legal methods: They sign contracts of sale or contracts of gift to each other or to their children.²⁵ Sometimes for the same end, the owner of an asset gives power of attorney, valid for postmortem implementation, to the pertinent member of his/her family. As to the inheritance of movable property, couples tend to solve it through joint bank accounts. This last procedure, in addition to allowing the inheritance of money deposited, contrary to the rules of inheritance law and the restraints of religion it further exempts the 'heirs' from paying inheritance tax.

It goes without saying that these methods adopted to evade the unfair inheritance law are nevertheless dangerous in case one of the beneficiaries is not trustworthy. It is worth noting in this context that the legal systems of all confessions is based on the separation of assets (of the spouses).

Second: Marriage Contracted Abroad

Marriage contracted abroad is effective in Lebanon if it is valid according to the country where it was contracted. This rule is effective even if the marriage is civil, since article 25 of the Decree No. 146, R.L., endorsed on November 18, 1938 allows the Lebanese to contract civil marriage outside Lebanon. In case of litigation about the marriage and its outcome, the civil court is the authority that settles this litigation according to the foreign civil law.²⁶

Article 79 of the Lebanese law sets as conditions for falling under the jurisdiction of the Lebanese civil courts that the marriage should be contracted by civil courts abroad, between two Lebanese or one Lebanese and one foreigner.²⁷

According to Article 18 of the Procedures Regulating Muslim Courts, such courts are competent only when the two partners in the marriage are affiliated to the confes-

sion the court rules, and at least one of them is Lebanese. So, if two Sunni Muslims married before a civil court abroad and one of the two is Lebanese, the religious court announces its competence to settle litigation. Article 18 is not applied if the two Muslims were of a different confession or if one was Muslim and the other non-Muslim.

Marriage Contracted Abroad Causes Several Conflicts:

1. Multiple Marriage Contracts:

Let us examine a marriage that was contracted between two Lebanese in France, registered in the personal status registers and was then followed by a religious marriage to please the family and friends. When the wife filed a lawsuit against her husband before the civil court, the Court of Cassation (Supreme Court) decided according to Decision No. 13/1991 dated March 14, 1991 that civil judiciary was incompetent to examine the litigation and that the priority remains to the religious marriage. The courts considered that the family public order in Lebanon is based on the religious marriage, whereas civil marriage is an exception to the rule. The aim of such exception is to safeguard the freedom of belief of those who do not believe in any religion recognized in Lebanon. By choosing later to have a religious marriage, the couple indicated that they accept the religious rulings.

In principle, if the civil marriage is registered in the personal status registers, it is supposed that both parties wish their marriage to abide by the civil law. However, the jurisprudence of the courts is not unified about this issue and the trend currently is to authorize confessional courts to settle litigations.

Thus, this unexpected verdict is in line with the new trend that promotes the competence of the religious authorities. The paradox in this ruling is that it reverses roles, so that the confessional law appears to promote freedom of belief and civil law becomes a particularity closed on itself. Indeed, it is known that the majority of those who contract a civil marriage in Lebanon do it out of conviction and not out of objection to religious belief. Also, many of those who contract a marriage in church are not concerned about the sacrament of marriage as a religious belief. They choose it because it is the only form of marriage allowed in Lebanon.

2. The Custody of Children:

The Lebanese law stipulates that the authority before which a marriage was contracted is the proper one to settle litigation resulting from this marriage, including the custody of the children.²⁸ However, this rule does not prevail over the rules of international jurisdiction,²⁹ since competence is disputed between the civil and the confessional authorities as previously mentioned.

By virtue of the Decree No. 109, R.L., the confessional courts are authorized to settle litigation when the national law of the couple is the confessional law. Consequently, the rules of this competence and the rules applied in the litigation become coherent between the Lebanese and the foreign authorities. The civil courts are authorized to settle litigation when one of the two parties is a foreigner. Therefore, the civil court decides to apply either the foreign civil law or the confessional law, according to the case under investigation, on all the outcomes of the marriage, including custody.

As to giving foreign verdicts issued in matters of custody the power of implementation on Lebanese soil, these verdicts also abide by the same rules that are applied to all verdicts related to personal status as we will demonstrate.

Child Kidnapping:³⁰

The issue of custody of children born outside Lebanon whether their parents have a civil marriage or were not legally married constitutes a vital as well as a legal problem. Bringing such problems before the courts is becoming a more and more frequent occurrence. Often, the parent with a Lebanese nationality returns to Lebanon with the minor children and is granted custody by the confessional court. This prohibits the foreign parent from exercising his/her right granted by the conjugal law or by the foreign habitation law. This is further against the wellbeing of the child failing to grant him/her the priority that he/she deserves. This is a real problem that is being discussed in all countries. It is especially problematic for countries not parties to regional or international agreements, particularly to the 1980 treaty on children's rights at The Hague.

Some unofficial international mechanisms have been established to observe the rights of children and safeguard their wellbeing. But in the absence of a legal backdrop their effectiveness is questionable. In Lebanon, official efforts are underway to encourage negotiations about this issue, especially through the International Bureau for Social Care, but their effectiveness is limited where legal disputes are concerned.

In 2004, the Malta Judicial Conference was held to find remedies for familial across-border conflicts, and Lebanon was a participant in this conference. It is expected that the decisions that transpired from this conference will lead to the signing of binary treaties between countries. Such treaties have proven to be the most successful when dealing with such conflicts.

3. Acquiring Nationality:

A foreign woman married to a Lebanese man has the right to acquire the Lebanese nationality upon her

request one year after the date of registration of the marriage in the census office. However, a Lebanese woman married to a foreigner cannot pass her nationality to her husband or children, even if they permanently reside in Lebanon.

4. Implementing Foreign Verdicts:

Article 1009 of Civil Procedure Code defines the foreign verdicts as follows: "Verdicts are considered foreign, in the proper sense, when issued in the name of a sovereign authority that is not the Lebanese sovereign authority." In case foreign verdicts require implementation in Lebanon, they need to be given the power of implementation on Lebanese soil, according to Article 1010 of Civil Procedure Code.³¹

Jurisprudence agreed to refuse to give the power of implementation on Lebanese soil to foreign verdicts issued in personal status matters when they are contradictory to the exclusive jurisdiction of confessional courts.³²

The Lebanese court, in the course of verifying that the conditions required to grant the request for implementation of the verdict are met, does not consider whether the basis of the foreign verdict is sound except in exclusive cases listed by Article 1015 (Civil Procedure Code). However, the court makes sure that some conditions are met according to Article 1014 (Civil Procedure Code), the most important of which is "that the foreign verdict does not contradict the Lebanese public order."

Such foreign verdicts seeking implementation are numerous. It is known that war in Lebanon caused the emigration of many Lebanese – estimated according to some statistics at over one million, i.e. not less than 20 per cent of the Lebanese population – who scattered across the earth. The majority of the people settled in their countries of emigration and married according to the laws of those countries and started families. Some of them returned to Lebanon and brought with them verdicts to be implemented. This is why the issue of foreign verdicts breaching the Lebanese public order was raised in many cases.

The concept 'public order' is evoked to dismiss a legitimate foreign rule that is not consistent with the national law or contradicts it. However, due to the absence of a unified system for personal status and to the multiplicity of the confessional laws, the concept of 'public order' is fluid and vague.³³ Thus, in application, the only conditions that are examined to decide whether a verdict meets the requirements of the 'public order' or not are the conditions of 'competence' and 'the right of defense.' These two conditions are speci-

fied in the civil laws, especially in the civil procedure law.

The legal marriage system, in Lebanon, is closed and not prepared to accept mixing. This is why its continuation is at the expense of people's basic rights which are unalienable and universal: The rights to freedom, to justice and to equality are the core of human dignity, and any violation of such rights constitutes detracting of this dignity regardless of the motives. The existing Lebanese marriage system, in addition to being incapable of guaranteeing the freedom of belief, leads to discrimination between citizens and to discrimination against women.

Confessional laws, whether Islamic or Christian, preserve the domineering structure of the family, where women are not treated on an equal footing with men. This limits women's participation in making major family decisions. Confessional laws with special authority are not interactive with the public legal system, open to human rights, as mentioned in the text of the Lebanese Constitution. The integration and consistency of Lebanese law with the international legal system depends on the openness of Lebanese law as privacy is no longer a sufficient justification for isolation, especially when this privacy is promoted at the expense of human dignity, which all religions concur in upholding.

Translated by Nadine El-Khoury

Endnotes

1. The definition provided by the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities is the following: "A non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population."

2. Issues pertaining to personal status are varied and target the nationality, census, inheritance, and family rights, but what we mean in this study by personal status is exclusively the issues that are examined by confessional courts and that abide by the laws applied on the members of the confession only. As to recognizing the 'Lebanese confessions,' it was made by virtue of Article 2 of Decree No. 60, R.L. endorsed on March 3, 1936 which stipulates: "Recognizing a specific confession has the effect of giving the text defining its system the power of law and putting this system and its implementation under the protection of the law and the supervision of the public authorities."

3. *The Legislative Situation in Arab Countries, Their Past and Present*, attorney-at-law Sobhi Al-Mahmasani, Beirut: Dar al-Elm Lel-Malayin, 1965, p.174.

4. Antoine Kheir 'Les Communautés religieuses au Liban personnes morales de droit public.' *Droit et Religion*. Bruxelles : 2003, Bruylant (œuvres du colloque organisé par CEDROMA, Université Saint Joseph, Beyrouth, 2000) p. 457.

5. See 'Minorités et organisation de l'état,' textes présentés au 4e colloque international (CICLEF), Bruylant, 1998 Université Libre de Bruxelles.

6. As an expression of their refusal of the system of closed boundaries for each religious sect, some Lebanese individuals, of different religious sects, attempted to enter into civil marriage contracts, in Lebanon, before a public notary. Their attempts were thwarted because of the ruling of article 16 of the law endorsed on April 2, 1951.

7. Article 16 of the law endorsed on April 2, 1951, stipulates: "Every marriage contracted in Lebanon by a Lebanese affiliated to a Christian or an Israeli confession before a civil authority is considered void."

8. Article 15: In mixed marriages, in principle, the contract must be signed before the religious authority to which the groom is affiliated unless both parties agree to marry before the authority to which the bride is affiliated by virtue of an agreement in writing signed by both parties and in which they pledge to abide by the laws of the mentioned confession. To the same effect, we

have Articles 61 and 62 of a law that was endorsed on July 16, 1962 regarding Muslim confessions.

9. Attorney-at-law Ibrahim Traboulsi, *Marriage and its Effects According to the Confessions Included in the Law endorsed on April 2, 1951*, 2nd edition 2000, pp. 249-250.

"Catholic and Orthodox patriarchs held a meeting at the Syriac Catholic Patriarchate's headquarters at Saydet al-Najat-Ashurfa Convent, on Monday, October 14, 1996. Discussions focused on mixed marriages... they stressed the importance of a law regulating this new reality and highlighting the ecumenical understanding in all our churches.

Catholic and Orthodox patriarchs promised to circulate the following: 1. The bride has the freedom to remain affiliated to her church, 2. The marriage ceremony is to be held at the church of the husband, and the priest presiding over the ceremony invites the priest of the bride's confession, if present, to hold prayers together, 3. The children are to be baptized in the church to which their father is affiliated, 4. The decisions regarding this stand are to be taken into consideration in the various holy councils."

10. Article 17, paragraph K of the new law of the Orthodox Church.

11. Article 14 defining the competence of the Christian and Israeli authorities: "The confessional authority that has the jurisdiction to examine a contract of marriage and its outcome is the authority before which marriage was contracted according to the rules and by virtue of the jurisdiction rules specified in Article 15 on mixed marriages. In case there are two or more valid contracts, the concerned authority is the one before which marriage was contracted first. In case there are two or more contracts, one of which fulfills the mentioned rules, then the concerned authority is the one before which the correct contract was signed."

12. Article 6 of a law endorsed July 16, 1962 regarding religious courts and Article 31 of a law endorsed on April 2, 1951 regarding the non-Muslim courts.

Article 31 of a law endorsed on April 2, 1951 stipulates: "The confessional authorities, according to their competence recognized by this law, implement their confessional laws on their members only, taking into consideration the special cases mentioned in this law."

13. Article 1 of Decree No. 109, R.L. stipulates the following: "Civil courts only have the competence necessary to examine

personal status issues concerning one or several foreigners if one of them at least is a citizen of a country where civil right prevails according to their laws in effect."

14. The Court of Cassation (Supreme Court) Decision No. 19/74 which considered that the acquisition of Lebanese nationality by a foreign woman married to a Lebanese religiously, before the lawsuit was filed, is enough to grant authority to the confessional court.

15. Article 4 of a law endorsed on April 2, 1951: Confessional authorities have jurisdiction over: first, filiation and the legitimacy of children and its effects; second, adoption; third, parental authority over the children; fourth: custody of the children and their upbringing until the age of maturity, i.e. 18 years, inclusive.

16. Article 9 of the Lebanese Constitution stipulates: "Freedom of belief is absolute and the state, by assuming its obligations to God, respects all religions and confessions, guarantees the freedom of celebrating rituals under its protection provided they do not breach public order. The state guarantees to its citizens, regardless of their confessions the respect of the system of personal status and religious interests to which they happen to choose to belong."

17. Article 41 of a law endorsed on December 7, 1951 stipulates: "He who changes religion or confession must file a request for the purpose to the personal status office enclosed with a certificate by the leader of the religion or the confession which he wants to embrace."

18. See the general committee of the Court of Cassation (Supreme Court) Decision No. 47 dated May 26, 1961. Also the Justice Minister's circular No. 11 endorsed on February 24, 1953, and the Justice Minister's report No. 222 dated February 15, 1954.

Abdo Younes, *Personal Status in Legislation and Implementation*, Beirut 1996, p.74.

19. The general committee of the Court of Civil Cassation (Supreme Court) Decision No. 24/96 dated October 17, 1996 Judicial Review, Issue 11, No. 22/96 dated October 3, 1996, p.1146; and Justice, issue 1, 1997, p.9; and others.

20. Dr. Afif Shamseddine, *Jurisprudences of the Cassation Court's General Committee from 1961-1999*, p.300 onwards. Decision endorsed by the general committee of the Court of Cassation (Supreme Court) on August 3, 1995;

21. Judge Sami Mansour, *The Protective Role of the Civil Judiciary in Personal Status Issues, the Lebanese judiciary building the authority and developing institutions*, Center for Lebanese Studies 1999, pp. 309-10.

"Only two decisions made an exception to this rule: the first issued by the Beirut Appellate Court, chamber six, No. 104, dated June 10, 1974, to deprive the first family. The second issued by the second civil chamber at the Court of Cassation (Supreme Court) Decision No. 30 dated November 8, 1989 and authorized the inheritance of both families. The first decision was challenged by the Cassation Court, the second decision remained intact."

22. Abdo Younes, *Personal Status in Legislation and Implementation*, Beirut 1996.

23. A decision by the general committee of the Court of Cassation (Supreme Court) Decision No. 13 dated May 9, 1996 from a study by Dr. Sami Mansour about religion and the conflict of laws in the personal status course, *Droit et Religion*, oeuvres du colloque CEDROMA Mai 2000 Bruylant, 2003.

24. Muslims in Lebanon abide by the religious inheritance law of every confession, whereas the Christians abide by the inheri-

ance law of non-Muslims which is a civil law endorsed in 1959. This law was expected to become a public civil law applicable to all Lebanese, but its implementation created a problem to the Muslims, which killed the attempt. According to religion, a Muslim does not inherit a non-Muslim. The rule of treating the other equally was adopted in the inheritance law for non-Muslims, which meant there is no inheritance in the case of a mixed marriage.

25. Ibrahim Najjar, *Droit patrimonial de la famille Droit matrimonial-successions*, 2e édition 1997, p. 35

26. Jurisprudence is unified about giving authority to the civil courts that implement the foreign civil law according to which marriage was contracted.

27. Article 79 of the law of civil procedure stipulates: "Civil Lebanese courts have the jurisdiction to examine litigation resulting from the contract of the marriage that took place in a foreign country between two Lebanese or between a Lebanese and a foreigner civilly according to the law of that country."

28. The issue of custody in the internal law still raises more than one problem, especially regarding women's right for the custody and guardianship of their children, and at the level of the implementation of verdicts granting custody to women. It is worth noting that confessional laws are unjust to women and their children and do not take into consideration the children's interest when deciding who should be granted custody, contrary to what was mentioned in the Declaration of Children's Rights which Lebanon signed.

29. Pierre Gannage, *Problemes soulevés au Liban par la garde des enfants nés d'époux de communautés ou de nationalités différentes. Le pluralisme des Status personnels dans les états multicommunautaires*, Bruylant 2001, p. 131 onwards.

The issue of the children's custody created a dilemma at the international level, which resulted in the signature of a number of documents aiming at protecting the children's stability and the rights of their mothers in particular, since courts in every country usually tend to grant the children's custody to their citizens. Among the treaties that came as a solution to the exacerbating problem was the one related to the civil aspects of kidnapping on the international level, The Hague, 1980.

30. The use of the expression child kidnapping has created problems in international conventions since some countries consider it an infringement on the rights of parents to exercise their legal rights.

31. According to Article 1010 of the Civil Procedure Code 'Foreign verdicts that affect assets or intimidation of the persons involved cannot be implemented except after being granted the power of implementation on Lebanese soil according to the terms of this law.

32. The Lebanese courts refuse to allow implementation, on Lebanese soil, of any foreign civil verdict that rules to divorce two Lebanese who have been married in Lebanon before a religious authority. They consider that the jurisdiction of settling such litigation belongs exclusively to the authority before which marriage was contracted.

33. In a decision issued by the Civil Court of Cassation Chamber 1 No. 39/99 dated March 16, 1999, the Cassation Court said that the decision, which grants the power of implementation on Lebanese soil to a French verdict authorizing divorce between a Lebanese man and French woman who married in Kuwait before the Greek Catholic religious authority, is legal and constitutes no breach to the Lebanese public order. Al-Adl, *Bar Association Review*, 1999, issue 2, p.178.