

Is Islamic Shariah Law Applicable under German Constitutional Law?

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I. Introduction

Germany has neither state-recognised religious courts nor state-recognised religious law. However, the German courts do have contact with religious courts and religious law in some cases involving foreign countries, for example where German conflict-of-law rules refer to foreign state-recognised religious law or the German judicial system recognises a decision by a foreign state-recognised religious court. This situation is also the case in Israel, which, as is well known, follows the Ottoman so-called Millet system for historical reasons. According to this system, some areas of law relating to persons, especially family law (personal status, especially marriage), are not subject to state law, but to the respective laws of the 14 religious communities recognised in Israel. The most important religious communities in Israel are (Orthodox) Judaism, Islam and Christian churches. The following remarks refer to members of the Islamic religious community in all states that follow the Millet system (including Israel).

II. What is Sharia?

1. Sharia in the Traditional Sense

In the literal (Arabic) sense, Sharia means the way to the watering hole, in the figurative sense, the way to Allah with the meaning of a religiously binding order of life for the followers of all monotheistic religions, i. e. Jews (Halacha), Christians (Holy

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