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Family Law in a Multicultural Sweden – the challenges of migration and religion*

"it is reasonable to suppose that cultures that have provided the horizon of meaning for large numbers of human beings, of diverse characters and temperaments, over a long period of time – that have, in other words, articulated their sense of the good, the holy, the admirable – are almost certain to have something that deserves our admiration and respect, even if accompanied by much that we have to abhor and reject. Perhaps one could put it the other way: it would take a supreme arrogance to discount this possibility a priori"[1]

"one should seek to understand other people's ways of knowing the world, on their own terms, before passing judgment on them according to one's own moral or legal criteria."[2]

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See www.impactofreligion.uu.se

[1] Charles Taylor, et.al., Multiculturalism. Examining the Politics of Recognition, 1994, pp. 72–73.

[2] Annelise Riles, Cultural Conflicts, Transdisciplinary Conflict of Laws, Law and Contemporary Problems, Vol. 71, 2008, p. 275.

1 From a country of emigration to a country of immigration

1.1 Mass-scale emigration from Sweden to the New World

A natural point of departure for a contribution aimed at celebrating 25 years of cooperation between the Faculties of Law of Uppsala University, Sweden, and the University of Minnesota, USA, is an aspect of our common heritage, namely immigration from the Old World to the New. Between the mid-1800s and the 1930s, more than half of Sweden's population emigrated to the New World. Hundreds of thousands of Swedes found a new home in the USA, not least in Minnesota. Vilhelm Moberg's suite of four books, originally published between 1949–1959, describe the lives of the young farming couple Nilsson, from the famine in Småland, Southern Sweden, to the Indian lands of Minnesota, USA, where they settled in 1850. The husband Karl Oskar Nilsson (later Charles O. Nelson) welcomes the new hierarchy-free society from the bottom of his heart, where everybody is a Mr., a Mrs., or a Miss. His wife Kristina suffers from lifelong homesickness, also struggling with the new language but never learning it and missing the religious traditions of Sweden. This suite of books was voted in the 1990s as Sweden's most influential work of literature in the 20th century. Its narrative continues to engage us, and gives us a perspective on the problems encountered today by the new immigrants to *Sweden*.

1.2 Successive societal developments in Sweden

The Sweden of today is profoundly different from the poor farming country that the Nilssons, in the first volume of Moberg's suite, left for a new life in Minnesota. In a comparatively short space of time, slowly starting from the late 1800s, Sweden has developed into an advanced, post-industrial society with an emphasis on secular-rationalism and self-expression.[3] Today, Sweden scores highly on a wide range of international indicators, such as standard of living, longevity, gender equality, well-being and well-functioning democratic institutions.[4] Individu-

[3] See Introduction, *Application of Uppsala University to the Swedish Research Council for Granting a Linneaus Center of Excellence for the Research Program Impact of Religion: Challenges for Society, Law and Democracy.*

[4] Ibid.

al autonomy and human rights constitute the core values. Although a clear majority of the population still belong to Sweden's former (until 2000) State Church "Church of Sweden" (Protestant Lutheran),[5] religion seemed to have gradually disappeared from the public sphere of life and become a largely invisible "private matter". In recent years, however, religion is being increasingly manifested publicly, as a sequel to immigration into Sweden. It has received a new kind of visibility, through, for example, newly built mosques and religiously articulated dressing codes, celebration of Ramada, and, increasingly, the founding of schools with a religious curriculum.

1.3 Sweden as the country of destination: work force and refugees

Immigration into Sweden started in the years around the Second World War. As one of the few European countries that had managed to remain "neutral" during the war, Sweden became a refuge for many people fleeing from the neighboring countries directly involved in the war. Afterwards, the country's industry blossomed, demanding workers from abroad. Finns, Yugoslavs, Italians, Greeks and Turks arrived, and many stayed once their families had joined them. During the last few decades, Sweden's immigration politics have shifted from recruiting workers, the local supply being basically sufficient, to providing a refuge for those most in need of protection for political or humanitarian reasons. As a result, a clear majority of the more recent immigrants to Sweden come from politically unstable countries that are also geographically and culturally distant. Iranians, and more recently, Iraqi and Somali refugees became the largest immigrant groups arriving from outside the Nordic countries.[6] This immigration has carried with it other cultures, traditions and religions to Sweden. A notable change is, not least, the new

[5] The State and the church (= Church of Sweden) were legally fully separated only from 1 January 2000. Until then the Church of Sweden was Sweden's state church. In all the other Nordic States, the Protestant Lutheran Church has still the status of "State Church".

[6] Statistics from 2007 show that 15 200 persons arrived that year from Iraq and 3 781 from Somalia, constituting the largest groups of persons arriving from outside the Nordic states. Altogether 99 485 persons arrived that year, of whom almost 16 000 were Swedish citizens returning home. Citizens from the other Nordic countries amounted to 10 464 persons. Source: Wikipedia/Invandring. – In particular after the creation of a joint Nor-

presence of Islam and Muslims in Sweden, with Islam having become Sweden's second largest faith, after the Church of Sweden.

Of Sweden's population of 9.2 million inhabitants (2008), 1.5 million were either born abroad or in Sweden to two foreign-born parents. If regard is paid to only one parent's foreign birth, 2.2 million inhabitants are of foreign origin (in part). Approximately 250 000 to 400 000 are estimated to be Muslims.[7] In evaluating the impact of Sweden's transformation from a country of emigration into a country of immigration – and the tensions this transformation has caused, it needs to be borne in mind that only half a century back Sweden, as regards its population, was an ethnically homogeneous country, with a clear Lutheran heritage.[8]

2 The focus and aim of this contribution

2.1 The Swedish notion of multiculture

Until recently Swedish politicians liked to describe Sweden as a "multicultural society", i.e., a society with several co-existing cultures. What was implied was a society that recognizes differences, if the differences are founded on such factors as national or ethnic origin, language, religion, gender, or sexual orientation. Such an understanding of multiculture recognizes not only the various origins of the population, in particular through immigration from distant countries, but also the fact that people have different identities and notions concerning the good life.

dic labor market in 1955, mobility among the Nordic countries (Sweden, Denmark, Finland, Iceland and Norway) is common.

[7] No statistics are available in Sweden regarding a person's faith. It follows that any estimation of the numbers of Muslims in Sweden is inaccurate. Nor is it self-evident who counts as a Muslim – a believer or a person born to a Muslim family? The fact that a person is born in a predominantly Muslim state is not sufficient. Research regarding the numbers of Muslims in Sweden, on the basis of the new inhabitants' countries of origin, has been undertaken by Mosa Sayed in his forthcoming LLD thesis (in Swedish) on (preliminary title) "Islam and Rights of Inheritance in The Multi-cultural Sweden" (Iustus Förlag 2009, Uppsala).

[8] For reasons such as state church membership and the popularity of the rites of passage among the members, Sweden – and the other Nordic countries – is often called "the Nordic exception" in the sociology of religion. See Anders Bäckström, Ninna Edgardh Beckman, and Per Pettersson, Religious Change in Northern Europe, 2004, pp. 86–113. – The industrious spirit of Sweden and the discipline of the population as regards duty – "work-before-pleasure attitude" – are commonly seen as expressions of the Swedish society's "Lutheran heritage".

Today, one can sense a greater caution in the political rhetoric. There is an increasing awareness that multiculture is not only about demographics, gender or equal rights irrespective of one's sexual orientation. As elsewhere in Europe, there is a growing concern in Sweden that the population includes groups that do not identify themselves with "Swedish values", for example in the sphere of family life. To what extent should this be recognized, and to what extent should limits be set? Recognition of differences and issues of identity (in particular when defined in terms of religion) have turned out to be complex. Politics of universalism, that so far have set the official goal, and the politics of difference now-requested seem to be in conflict. Whereas the *politics of universalism* emphasize the equal dignity of all citizens, enjoying equal rights and entitlements, *politics of difference* focus on the unique identity of an individual or a group, i.e., their distinctness from everyone else, and demand recognition and equal status for all cultures.[9] All cultures should, in other words, be recognized as being of equal value.

In Sweden, a more general legal discourse concerning the challenges of multiculture – or recognition and identity – has not yet taken place.[10] The legal measures with a clear multicultural message have been of a piecemeal character, focusing on topical problematic issues such as honor killings or forced marriages. Questions such as whether alternative dispute mechanisms should be recognized, for example in the form of a Sharia council, have not reached the political agenda.[11] A probable explanation is that since the transformation from an all-level homogeneous society to a multicultural society took place very rapidly, the legal actors, such as the legislator, courts and legal scholars, lack the necessary knowledge and insight of the need to analyze and develop tools for the new situation

[9] These definitions are, largely, based on Charles Taylor's concepts, as defined in his (et al.) work Multiculturalism. Examining the Politics of Recognition, 1994.

[10] One of the first major contributions in the Swedish legal literature will be Sayed's above-mentioned LLD thesis, ibid. note 7.

[11] In this respect, Ontario, Canada has been in the forefront of development. Ontario's Arbitration Act was amended in 1991, allowing "faith-based arbitration". This made it possible for Muslims, Jews, Catholics and members of other faiths to use the guiding principles of their own religion to settle family law disputes outside the court system. Furthermore, Ontario has considered the establishment of a Muslim Arbitration Tribunal. A proposal to this end, permitting continued faith-based arbitration, by the former Advocate General Marion Boyd has, however, been rejected, the main argument being the importance of having one law only for all Ontarians.

and its challenges. The minority groups, in turn, are in many cases not organized enough to make demands for autonomy. When it turned out that the workforce recruited to Sweden aimed to stay (see above, Section 1.2), it was taken more or less for granted that the new groups would assimilate or at least integrate into Swedish society. Equally it was taken for granted that the new inhabitants expected to be subject to Swedish law in all respects.

2.2 Private international law as a multicultural tool

Both assimilation and integration imply a "melting" into the new society, i.e., that the new inhabitants become an integral part of it. Sweden's *rules of private international law* served as a kind of a bridge in this process, drawing the borderline between situations governed by the laws of the immigrants' country of origin and situations requiring application of Swedish law. Once the immigrant has crossed the bridge – by acquiring Swedish citizenship or by becoming domiciled (habitually resident) in Sweden – the laws of the states of origin no longer applied but were replaced by the application of Swedish law.

In Sweden, special rules on *choice of law* are applied to cases with cross-border connections. These rules are mainly statutory and form part of a field of law called *private international law*. Depending on the connecting factor of a case to a foreign jurisdiction, such as a party's (existing!) foreign domicile or foreign nationality, the rules on choice of law may refer to a foreign law, instead of Swedish law. For example the law applicable to matrimonial property relations is decided on the basis of the spouses' habitual residence, unless the spouses have otherwise agreed.[12] If the habitual residence is abroad, it is the court's obligation to examine any claim in accordance with the domestic law of that foreign state. This law may be of a religious origin, for example if it is closely linked with the Koran and Islam, or with Canon Law. To be applicable in a Swedish court the foreign law must, however, apply as the law of a nation-state. Sharia or Canon Law does not on its own constitute applicable "foreign law".

[12] Act (1990:272) on International Issues Concerning Spouses' and Cohabitees' Property Relations, 4 §. It should be noted that this enactment endorses party autonomy, granting the parties the right to choose the applicable law themselves, although within a limited number of jurisdictions with a close relation to at least one of the parties at the time of the agreement.

When a choice of law rule refers to foreign law, the foreign law is in all procedural aspects treated as law by a Swedish court, and not as a fact. The applicable foreign law is interchangeable in relation to Swedish law, the underlying assumption being the equivalence of foreign and domestic law. Due to the situation's transfrontier character, the law of the forum cannot claim exclusivity or preference of application, but only the same treatment as any foreign law. This outlook on choice of law in transfrontier situations dominates the whole European continent.[13]

2.3 When citizens' relate to something other than "the law of the land"

It is only recently, and mainly with the Muslim immigration into Sweden, that the impact of multiculture on matters of family law has become visible and an object of public debate. Allegedly, many of the new Swedes wish to conduct their private and family lives in accordance with religious values and traditions that derive from their country of origin and which may conflict with Swedish law. Once the individuals concerned have become Swedish citizens with residence in Sweden, such preferences can no longer be justified by reference to the rules of private international law. Concerns of accommodation arise. The growing importance of human rights and basic freedoms in Sweden (and Europe in general) both supports the individuals' right to choose their way of living and puts limits on the choices. Consequently, human rights law provides a useful point of reference for courts struggling with issues of pluralism, religion and family law.[14]

To date, informal "Sharia" courts or councils have not existed in Sweden. Still, the religious leaders of local Muslim communities – the Imams – play an important counseling role not least in family matters, and may also influence the members' notion of what Islam is and what religion requires in various legally relevant contexts. The background of these religious leaders in Sweden varies a lot, but many are reported to

[13] See Maarit Jänterä-Jareborg, Foreign Law in National Courts, A Comparative Perspective, Recueil des Cours 2003 (Vol. 304).

[14] See Ann Laquer Estin, Toward a Multicultural Family law, The Multi-Cultural Family (Ed. Laquer Estin), 2008, pp. 30–31.

have insufficient knowledge of the Swedish language, the laws of Sweden and Swedish society as such.[15]

The issue of citizens relating to something other than "the law of the land" alone is topical not only in Sweden but also in other European Union member states. To enter into any public debate in favor of the inclusion of religiously-influenced norms is also a minefield, as reactions to a public lecture given by the Head of the Church of England, Dr. Rowan Williams (Archbishop of Canterbury) in February 2008[16] clearly demonstrated. Williams pleaded for taking religion seriously in England and for including it in the construction of modern society, as an instrument for social cohesion. According to Williams, religion and in particular Islam is a challenge not least to family law, considering the important role it plays in the daily lives of many people. According to Williams, people can be true both in their faith and in their role as a citizen of a secular state, on condition that there is inclusion (also of religious norms), i.e., recognition. Only then can one achieve "an active citizenship". In July 2008, also Britain's most senior judge Lord Chief Justice Lord Phillips expressed sympathy for the idea of applying Islamic legal principles to Muslims in some parts of the legal system, for example matrimonial law, within the framework of agreed mediation or alternative dispute resolution.[17]

Storms of protest have followed both contributions, i.a., on the grounds that if carried out, suggestions like this would threaten the very foundations of the British society. Equality before the law is as stake, as women could be disadvantaged in supposedly voluntary "Sharia" deals. The Archbishop is also accused of using the new groups to give legitimacy to religion and to strengthen its role. It should be noted that both debat-

[15] See the report of the special committee, appointed by the Swedish government, to investigate whether the State should provide access to a specially drafted education aimed for leaders of the Muslim communities, Staten och imamerna, Religion, integration, autonomi, SOU 2009:52, p. 12. – It is not unusual that an Imam is recruited from another country to serve a Muslim community in Sweden, without any previous knowledge of Sweden.

[16] Islam in English Law. Civil and Religious Law in England – Lecture by the Archbishop of Canterbury, Dr. Rowan Williams. Lambeth Palace, 7 February 2008.

[17] Equality Before the Law. Speech by Lord Phillips, Lord Chief Justice. East London Muslim Centre, 3 July 2008. – According to some media commentators, parts of the Lord Chief Justice's speech can be described as a "more coherent version" of what the Archbishop tried to say.

ers focused on out-of-court dispute resolution, and voluntary adherence to Islamic family law. In case of disagreement, any "religiously-biased" family law dispute can be taken to civil courts.

2.4 Demarcations

This contribution aims to focus attention on the challenges of multiculture, through immigration and religion. I share the notion of, e.g., Tariq Madood, according to whom "the novelty of contemporary multiculturalism is that it introduces into western nation-states a kind of ethno-religious mix that is relatively unusual for those states, especially for western European states".[18] This notion explains also my choice of perspective. In the light of the public discussion in Sweden, it is evident that religion's new visibility and impact creates confusion and uncertainty regarding "what is what" and the proper response. It is not clear where the borderline goes between "religion", covered by the constitutionally protected freedom of religion, and, for example, merely patriarchal traditions that are not protected. Potential conflicts between religion and citizens' equality before the law create additional confusion.

I will use areas of family law as examples, namely the law of marriage, divorce and child custody. As illustrated by the British debate, family law is of particular concern in any truly multicultural context. Family law has special "cultural constraints", which will be highlighted below in Section 3. Attention will then be drawn in Sections 4 and 5 to (a) to what extent the Swedish legal system in the chosen areas recognizes – or fails to recognize[19] – legal diversity, and (b) concerns where the line should be drawn for the exclusiveness of forum law, i.e., the mandatory application of Swedish law. Whereas the surveys concerning the conditions for marriage and the right to divorce describe the Swedish concerns and developments more in detail, in respect of child custody (Section 6), I will tentatively identify certain difficult issues which in my opinion require further attention, not only from the legal actors but also from the parents.

[18] See Tariq Modood, Multiculturalism. A Civic Idea, 2007, p. 8.

[19] This response is, increasingly, called "misrecognition".

3 The "cultural constraints" of family law

3.1 Family law as the crux of the society and an expression of morality

Of all fields of law, family law is traditionally regarded as the "culturally most constrained" or "introverted" field of law, shaped in each nation-state by the country's history, culture, religion, prevailing social and political conditions, etc.[20] As the Belgian family law scholar and comparatist Marie-Thérèse Meulders-Klein puts it, the values with which family law is charged, as well as its role in the attribution of legal personality, bonds of kinship, the identity and the personal status of the individual and the ways families are structured, "place family law in the very crux of society in every country".[21] Meulders-Klein, further, emphasizes

> "that every nation has an interest in keeping a close eye on its law regarding the status of the individual and the family which, being a *matter of public policy*, is off-limits, *d'ordre public et indisponible*, and mostly placed under the protection of the national Constitutions".[22]

According to the Norwegian scholar in private international law Helge Johan Thue, family law is to be seen not only as an expression of a (nation-state's) culture, but also as the basis of each individual's self-conception. It follows, that it is not suited for any kind of external pressure, e.g., attempts at harmonization.[23]

A further special trait of family law is its alleged moral dimension. For example, the influential 19th century German scholar Friedrich Carl von Savigny classified family law as a predominantly moral institution.[24] Although the role of morality has decreased considerably in the western family law systems, in particular since the 1960s, it still has an impact on family law. How extensive this influence is and how deep it goes, as well as notions of morality may, nevertheless, vary considerably from

[20] See, e.g., Masha Antokolskaia, Introduction, Convergence and Divergence of Family Law in Europe, 2007, pp. 1–8.

[21] Marie-Thérèse Meulders-Klein, Towards a Uniform European Family Law? A Political Approach, Convergence and Divergence of Family Law in Europe, 2007, pp. 272–273.

[22] Ibid., p. 273.

[23] See Helge Johan Thue, Europeisk familierett – uniformering eller toleranse?, Globalisering og familieret, 2004, pp. 120–123.

[24] See Markku Helin, Perheoikeuden siveellisestä luonteesta, Lakimies 2004.

nation-state to nation-state. The same questions can be posed in relation to religion's impact on law.[25] Religion and morality also seem to be intertwined. For example, in the fairly new member state to the European Union, Malta, opposition to divorce, same-sex marriage and abortion (all forbidden), finds support in both.

3.2 Swedish developments – towards a "secular" outlook on family matters

In the past, family law in Sweden was intimately connected with religion and religious outlooks.[26] The legal validity of a marriage was, as a rule, linked to a religious marriage ceremony which constituted a life-long, undissolvable union between a man and a woman. Since the early 1900s, however, Swedish family law has developed in a secular direction and is regarded as internationally "progressive" and "women-friendly" – and in the forefront of European development. It is based on the notions of secularism, liberalism and equal rights for men and women. In addition, and probably more explicitly than anywhere else, legislation on family law has been used in Sweden as an instrument for "social engineering", to dispel tensions between new societal values and the values expressed in (allegedly out-of-date) legislation or, on the contrary, to steer societal values in a direction desired by the legislator.

An often quoted example, which in fact mixes both of these approaches, is Sweden's divorce legislation of 1973 which abolished guilt and the irretrievable breakdown of marriage as divorce grounds, making a spouse's wish to dissolve the marriage alone sufficient for applying, and granting, divorce. The legislator also abstained from giving marriage a higher ranking than cohabitation outside of marriage, which by that time had already become very common in Sweden whereas marriage rates had dropped. These positions were supported by referring to the necessity of abstaining from any value judgements regarding societal developments and individual behavior, and the need to rely upon the individuals' ability and responsibility to shape their own lives.[27] Respecting the individual's

[25] What is "religion" and what is "morality" may also overlap.

[26] A reader of Vilhelm Moberg's suite (Section 1 above), in particular in the first volume, is struck by the influence the Swedish state church exercised on the everyday lives of the Swedes in late 19th century.

[27] In connection with the law reforms carried out in the early 1970s it was emphasized that "new legislation should as far as possible remain neutral in relation to different forms

autonomy, and remaining neutral regarding the "good life" became the Swedish legislator's concept in the field of family law.

> It may be appropriate to remind a US reader that the legal system of Sweden belongs to the civil law family, statutory law (= legislation) being the primary source of law. In the application of the legislation, guidance is primarily sought in the *travaux préparatoires* preceding the enactment, in particular the Government Bill. The impact of case law remains casuistic and limited in time. When new developments in society call for change, or case law has developed in a direction considered undesirable, legislation is the instrument to be used.

3.3 The impact of the European Union on Swedish law

On the other hand, legislation and other legal sources in Sweden are no longer predominantly of Swedish origin, but originate to a great extent from the European Union which Sweden joined in 1995.[28] If in conflict with the national law, the community rules take precedence. Domestic family law – due to its "cultural constraints" – is among those few areas of law that still remain within the domain of each EU member state's legislative sovereignty. Cross-border family law measures, on the other hand, are within the EU's legislative competence, and are used by the Community legislator to promote the citizens' mobility within the member states' territories. Several EU regulations have been enacted in the field of international family law. Generally speaking, they take precedence not only in relation to national law but also in relation to international conventions to which member states are parties.

3.4 The challenges and the tools

The cultural constraints of family law raise difficult issues. If, on the one hand, family law is intimately linked with a person's or a group's cultural identity, then that person or group may wish to carry that law with him or her/the group everywhere. As Charles Taylor puts it, due to multi-

of cohabitation and to different moral concepts". Furthermore, "provisions concerning married individuals should be drafted in such a manner as to make it possible for each spouse to retain a large measure of independence during marriage". See the Committee Report of the legislative committee (Familjelagssakkunniga), SOU 1972:41, Familj och äktenskap I.

[28] To date (2009), the European Union has 27 member states.

national migration more and more of the members of a society live the life of the diaspora, whose center is elsewhere.[29] But on the other hand, from society's point of view, family law may at least in certain fields be an indispensable instrument for controlling and steering societal behavior. Evidently, these two aspirations may be in conflict. In the contemporary debate about multiculturalism, the demand – and the alleged solution – is the recognition of the equal value of different cultures. But as emphasized by Taylor, the equal worth of cultures can only count as a presumption and requires comparative cultural studies, and a willingness to be open to other cultures, before any real position can be taken.[30] I share Taylor's concern.

A further complication relates to drawing a line between an individual's rights and autonomy, and group pressure. The English family law professor Penny Booth pinpoints the problem candidly:

> "The danger is in the development of a parallel system of (any) law where the choice as to which system or principle is used is determined not by the individual or the issue but by the *group bullies*. In family law this danger could arise where the determination of system and approach is not made by the woman but the man: not through the female but through the male-dominated system. Trouble arises where principles integral to a conception of justice require subservience to a particular approach in law which itself favours one sex or group over another."[31]

In Sweden, private international law is currently the main tool for recognizing other cultures in the field of family law. This is also the general continental European approach. Consequently, if a situation does not qualify as transfrontier, the scope for recognizing anything else than the majority culture, as dictated by the "law of the land", is limited. In fact, the Swedish responses to multiculture outside of a purely Swedish value context[32] have mainly consisted of combating diversity. The law of mar-

[29] Charles Taylor, et.al., Multiculturalism. Examining the Politics of Recognition, 1994, p. 63.

[30] Ibid., pp. 72–73. – According to Ann Laquer Estin, "the multicultural family navigates a complicated balance of tradition and change, home and diaspora, community and autonomy", The Multi-Cultural Family (ed. Laquer Estin), p. xi.

[31] Penny Booth, Judging Sharia, Family Law Journal 2008. Emphasis added.

[32] Legal pluralism exists in a "purely Swedish value context" in form of a special legislation for cohabitation outside of marriage for the protection of the weaker party, the access to registered partnership for same-sex couples and, since 1 May 2009, the extension of the institution of marriage to same-sex couples.

riage and divorce, described in the following Sections 4 and 5, offers illuminating examples of this. For this reason, the headings of both Sections refer to combating multiculture.

4 Combating multiculture – the case of child marriages and forced marriages

4.1 Marriages celebrated in Sweden

In 2004 new legislation, aimed at protecting the individual against compelled or premature marriages, entered into force in Sweden.[33] Through the law reform application of Swedish law became obligatory whenever a marriage takes place in Sweden, the aim being to safeguard the voluntary nature of every marriage and that both parties are adults. The reform's multi-cultural implications are obvious. Forced marriages and child marriages are, namely, in Swedish society connected with immigration into Sweden from countries with another outlook on marriage, the rights of the individual and the child, as well as on gender equality. However, these issues are of concern also in respect of certain ethnic communities that have lived in Sweden for generations, for example Swedish Romanies.

> Forced marriages are marriages to which at least one of the parties was compelled. In a child marriage, at least one of the parties was under the age of eighteen (i.e. the age of majority and of marriage in Sweden) at the time of the marriage. Forced marriages and child marriages coincide when the compelled person was a minor at the time of the marriage.

The 2004 law reform was preceded by an intensive media attention focusing on so-called honor killings of young immigrant women living in Sweden.[34] The incentive for these murders, committed by the father or the

[33] The new legislation consists mainly of amendments in the Swedish Act on Certain International Legal Relationships on Marriage and Guardianship (1904:26, p. 1) and the Swedish Marriage Code (1987:230). This amendment is also commented upon by Åke Saldeen, Sweden: Legislation on Forced Marriage and Intercountry Adoption, The International Survey of Family Law, 2006, pp. 439–441.

[34] See Maarit Jänterä-Jareborg, Combating Child Marriages and Forced Marriages – the Prospects of the Hague Marriage Convention in the Scandinavian 'Multicultural' Societies, Intercontinental Cooperation through Private International Law, Essays in Memory of Peter E. Nygh, 2004, pp. 163–175; Göran Lambertz, 'Honour Killings' and Their

brother of the young woman, was her refusal to marry a man chosen for her by her family and/or her desire to lead an independent life, including the right to have a boyfriend and to choose a spouse. A shock wave passed through Swedish society, demanding measures to safeguard every person's fundamental right to shape her own life according to her will and ability, or, on the contrary, "not to make a fuss". The debate went as follows:

> Are we dealing with oppressive foreign traditions lacking counterparts in the western society? In that case, we must not close our eyes to the every day lives of many immigrant families in Sweden, but must take measures to protect the victims, i.a., through legislation. Or is it a question of yet another expression of patriarchal suppression of women, comparable to the well-known western phenomenon of domestic violence and wife-beating? If so, we should not lose our sense of proportion and not take measures labeling foreign traditions as inferior to our own.[35]

More recently, a young Afghan man faced a similar fate, after an engagement to a young Afghan woman against the will of her family. By brutally killing the young man, the young woman's family re-established a "status quo". In this case, as well as in the other cases of honor killings, both the victim and the perpetrator of the crime were domiciled in Sweden and were in many of the cases, naturalized citizens of Sweden. Both examples demonstrate brutal patriarchal traditions and should not be attributed to religion or its impact.

Until the 2004 amendment, the starting point in Swedish law was to examine each person's right to marry according to his or her national law (= *lex patriae*). Considering the number of foreign citizens residing in Sweden, the application of foreign law was common. Since the marriage age in many countries around the Mediterranean and the Middle East is lower than in Sweden, also child marriages were permitted. A limit applied to children *under the age of fifteen years* (!), in which case a special permit by the competent Swedish authority was required for the marriage, even if the marriage was permitted under the child's national law.

Export to the West, Family Life and Human Rights, Papers Presented at the 11th World Conference of the International Society of Family Law, Oslo 2004, pp. 417–426.

[35] See further Maarit Jänterä-Jareborg, Barn- och tvångsäktenskap I Sverige – finns det utrymme för olika kulturer och tolerans? Festskrift til Helge Johan Thue 70 år, 2007, pp. 304–320.

This practice was found to discriminate against children, on the basis of nationality, and it was heavily criticized.

The critics included the UN Committee on the Rights of the Child and the UN Committee on Human Rights. Foreign citizens had been clearly overrepresented among married persons under the age of eighteen years in Sweden. When the practice became public knowledge – and condemned in the media – the number of child marriages in Sweden went down dramatically and included very few children as young as fifteen years of age.[36] It is, however, difficult to estimate to what extent children are subjected to "religious" or other unofficial marriages within their own community, celebrated without permission under Swedish law.

Through the law reform, the general marriage age of eighteen years according to the Swedish Marriage Code became applicable to everybody wishing to marry in Sweden. A special permit by the county administrative board to marry at a lower age is necessary. Such a permit may be granted according to the redrafted, more stringent wording of the Marriage Code only if there is "special reason", with regard to the minor's own attitude and maturity. Interestingly, the Government Bill emphasizes that the fact that the minor is pregnant or belongs to a group supporting a lower marriage age due to traditions or religion is in itself not a sufficient reason for granting the permit.[37] Nevertheless, pregnancy can qualify as a special reason if it would place the minor as unmarried in a particularly vulnerable situation in her culture of origin.

4.2 Marriages celebrated abroad – when people wish to evade Swedish law

Marriages that take place abroad are, basically, outside Swedish control, and their recognition is subject to Swedish rules on private international law. Here the point of departure is that a marriage is legally valid in Sweden, if it is valid in the state of celebration or in a state or states where the man or the woman[38] were citizens or habitually resident at the time of the marriage.

[36] See Memorandum of the Swedish Ministry of Justice, Ds 2002:54, Svenska och utländska äktenskap, pp. 50–51, and SOU 1987:18, p. 352.

[37] See Government Bill (Prop.) 2003/04:48, pp. 20–22 and 45–46.

[38] Since 1 May 2009, Swedish legislation on marriage is gender-neutral and same-sex marriages are permitted. Not only is Sweden's Marriage Code reformed to this effect, but

Tightening the marriage requirements in Sweden was feared to lead to an evasion of Swedish law, in particular the age limit of eighteen years, by celebrating the marriage abroad. To avoid this, a new provision was introduced according to which a marriage that has been entered into under foreign law shall not be recognized in Sweden *if,* at the time of the marriage, there would have been an impediment to the marriage according to Swedish law *and* at least one of the parties was then a Swedish citizen or habitually resident in Sweden. It shall, for example, not be possible for parents to marry off their minor children in a foreign country, often the family's country of origin, and count upon the marriage's validity in Sweden. The marriage continues, as a rule, to be invalid in Sweden even after the child has reached the age of majority.

Non-recognition of the foreign marriage means that the marriage is null and void, i.e., that it does not legally exist and has no legal effects in Sweden. The marriage "limps" (limping marriage), if it is legally valid in the country of celebration. To prevent far-reaching negative consequences in individual cases the legislator decided to modify this point of departure by an additional provision stating that it would not apply "if there is special reason to recognize the marriage".[39] Examples given in the Government Bill[40] include (originally) bigamous marriages once the first marriage has been dissolved as well as situations where the link to Sweden at the time of the marriage was only of a formal character[41] but real and concrete in relation to the state where the marriage was celebrated, situations where a long time has passed since the marriage, and situations where regard to the joint children of the couple strongly calls for recognition in Sweden.

During the five years that have passed since the enactment, a strict practice of non-recognition has developed. The following case is illustrative.

all provisions in Swedish law relating to marriage are to be interpreted in a gender-neutral manner.

[39] Act 1904:25 p. 1, Ch. 1 § 8a para. 2.

[40] Government Bill (Prop.) 2003/04:48, pp. 32–33 and 55–56.

[41] This can be the case if one of the spouses was a dual citizen, possessing Swedish citizenship in addition to the citizenship of the State of habitual residence, but without factual "everyday" ties to Sweden.

Example: A marriage had been entered into in Lebanon between a 30-year old Swedish citizen, of Lebanese origin but since long domiciled in Sweden, and a 17-year old Lebanese citizen, domiciled in Lebanon. The Swedish Population Records Agency (= *Skatteverket*) refused to register the marriage, on the ground that the woman had been under 18 years of age at the time of the marriage. The court of first instance to which the couple appealed against this refusal, found reason to recognize the marriage considering that it had taken place only 10 weeks before the woman reached the age of 18 years and that she had married voluntarily.[42] The second instance court, nevertheless, confirmed the agency's decision.[43] The court explicitly stated that the fact that the woman had reached majority was not such a special reason that can justify recognition of the (in the eyes of Swedish law: invalid) marriage. This decision became legally effective and has formed an important precedent.[44]

When evaluating this strict practice it should be kept in mind that the couple is legally free to marry in Sweden once the minor has reached the age of majority.

Future actions are under consideration. The Swedish Government is expected to present a Bill to Parliament in the near future proposing that a custodian, who allows a child under the age of 16 to enter into a marriage that is valid in the country of celebration, shall be sentenced to imprisonment for a maximum of two years.[45] A requirement is that the child at the time of the marriage is a Swedish citizen or resident in Sweden.

[42] Länsrätten, Uppsala, case no. 2206-04E, decision 2004-10-21.

[43] Kammarrätten, Stockholm, case no. 7023-04, decision 2005-01-26.

[44] In a subsequent case, a female Swedish citizen had married in Ethiopia at the age of 17 years and 11 months. Even this marriage was refused recognition. In support of her application the claimant had, i.a., referred to the disgrace that the invalidity of the marriage would bring on her and her family, cohabitation without marriage being forbidden under Islam. Kammarrätten, Jönköping, case no. 3459-04, decision 2005-06-09.

[45] This provision is proposed to be included in Chapter 7 of the Penal Code "Offences Against Family". See SOU 2008:41 Människohandel och barnäktenskap – ett förstärkt straffrättsligt skydd.

4.3 Forced marriages abroad

According to the 2004 amendment, if it is made probable that a marriage was entered into under coercion, it shall not be recognized in Sweden.[46] To stress Swedish society's dissociation from marriages entered into under duress this ground of invalidity, unlike marriages contrary to Swedish marriage impediments, is *not* dependent on any link to Sweden at the time of celebration. It is as such also irrelevant when and where the marriage was celebrated and which of the spouses – the forced one or the other spouse – raises an objection on this ground towards the validity of the marriage.

> **Example:** The husband arrived in Sweden as an asylum seeker in 2002 and was registered in the Swedish population records as married. His wife arrived in Sweden a few years later, when the amendment was already in force. The competent Swedish authority deleted the husband's marital status from the population records, after the wife had made it probable that the marriage had been entered into under coercion. By that time, the wife had met a new man in Sweden whom she wished to marry.[47]

Arranged marriages between adults, on the other hand, are not banned in Sweden as long as coercion does not exist. Where such marriages are commonly practiced in the family's country and culture of origin, in Sweden's case mainly the countries around the Mediterranean and Middle East, this practice has, so to say, also followed with the emigrants into Sweden. This acceptance implies an insight indicating that the majority society (its institutions and legal order) should be open towards other cultures, as long as they respect human dignity, in this case the concerned individuals' autonomy to the final decision. Arranged marriages were, previously, also practiced in Sweden. Sweden's acceptance of arranged marriages is regularly attacked in the Swedish media, the problem being how to prove where the "arrangement" also entails coercive elements. No figures, or estimates, are available on the matter.

[46] See Act 1904:25 p. 1, Ch. 1 § 8a para. 1.2.

[47] Oral information from Swedish Population Records Agency.

5 Combating multiculture – the case of divorce

5.1 Divorce as a fundamental right of Swedish law

Since a law reform carried out in 1973, all divorce applications in Sweden are subject to the divorce provisions of the Swedish Marriage Code.[48] The law does not require any minimum duration of the marriage; theoretically this means that a marriage can be dissolved almost immediately after its celebration. In certain cases a reconsideration period of six months, counted from the application, is obligatory before divorce can be granted.[49] Whatever links the spouses may have to a foreign jurisdiction, through nationality or domicile, is today basically irrelevant.[50] Through this reform, a spouse's eventual "guilt" as regards the breakdown of the marriage, as well as any other irretrievable breakdown of the marriage, were abolished as grounds for divorce. A spouse's wish to dissolve the marriage is sufficient to obtain a divorce.

This approach qualifies divorce in Sweden as an issue concerning the fundamental freedoms of the individual, as well as equal rights of men and women. Just as a spouse is free to marry, he or she should be free to dissolve the marriage, irrespective of the wishes of others.

5.2 Collisions with other outlooks on divorce

This outlook collides with a more conservative outlook on family stability prevailing, for example, on the European continent, and explains Sweden's opposition to the European Union's plans to enact community rules concerning the law applicable to divorce in cross-border cases.[51] Obviously, it is also impossible to reconcile it with any patriarchic tradition

[48] See above, Section 3.2.

[49] A condition is that neither of the spouses objects to the divorce and that neither of them is the custodial parent of a child under the age of sixteen years. If these conditions are not fulfilled, an obligatory reconsideration period of six months must follow the divorce application. After that period, the divorce shall always be granted upon application of either spouse.

[50] Before the 1973 law reform, also foreign law could be applicable under certain circumstances.

[51] See Maarit Jänterä-Jareborg, Jurisdiction and Applicable Law in Cross-Border Divorce Cases in Europe, Japanese and European Private International Law in Comparative Perspective, 2008, pp. 331–332 and 339–340.

which regards divorce as the *husband's* (more or less) sole right. Swedish case law includes several appealed cases where an immigrant wife originating from a Muslim country has applied for divorce in a Swedish court. In this case law, several issues have been at stake.

One of the issues has been whether the applicant's ties to Sweden are of such a nature as to grant Swedish jurisdiction. (In these cases the husband did not reside in Sweden.) Although an asylum seeker normally does not qualify as a resident of Sweden, this approach has not been followed in divorce cases. The Swedish Supreme Court has instead been willing to qualify the applicant as a resident, in particular in situations where her prospects of initiating divorce proceedings in another country were considered to be poor.[52]

It has also occurred that the defendant husband has objected to the application claiming that under the spouses' law of citizenship – e.g. Iran – only the husband has a right to dissolve the marriage, unless the marriage contract between the spouses stipulates otherwise. This objection has been disregarded by Swedish courts, also in a case where the respondent husband was resident in the spouses' country of origin and the wife alone had come to Sweden.[53]

As regards recognition of unilateral "*talak divorces*" by the husband, abroad, the Swedish Supreme Court has declared that they can be recognized in Sweden on the condition that at least one of the spouses had a close link to the state where the divorce took place *and* that a public authority of that state has been involved to some extent, for example that the *talak decree* has been registered by such an authority.[54] Probably, this position needs to be reconsidered with regard to the decision of the European Court on Human Rights in the case of Pellegrini v. Italy (2001)[55]. In its judgment the European Court considered Italy's recognition of a Vatican court annulment of the marriage between an Italian couple, upon application by the husband, to have violated the wife's right to a fair hearing, protected by the European Convention on Human Rights

[52] See Supreme Court Decision NJA 1994 p. 302, where the spouses originated from Bangladesh. The other decision along this line – NJA 1995 p. 238 – concerned a Croatian wife's divorce application against her Serbian husband.

[53] See Supreme Court Decision NJA 1991 A 2.

[54] See Supreme Court Decisions NJA 1989 p. 95 and NJA 1989 C 83.

[55] Judgment in the case of Pellegrini v. Italy (no 30882/96), European Court of Human Rights 20.7.2001.

(Article 6).[56] Mrs. Pellegrini, namely, in the Canon Law proceedings of the Vatican had not been given due opportunity to defend her case. After this judgment any unilateral divorce by the husband, not endorsed by the wife, should be considered to be a violation of the Convention and, as a result, not recognizable in Sweden. The recognition and enforcement of a foreign decree on divorce are seen as an integral part of the whole legal process leading to the divorce, and not just a separate part.[57]

It happens that the Swedish courts' jurisdiction and judgments are not recognized in immigrant communities. This seems to occur in particular in situations where divorce has been granted by the application of a wife, belonging to a Muslim community or originating from a Muslim country.[58] It is, instead, necessary that the Swedish divorce decree is supplemented by a religious divorce order, issued by a competent imam in Sweden which, in turn, seems to require the husband's consent and cooperation.[59] Where he is opposed, the wife's prospects of, e.g., visiting her country of origin and then return to Sweden may be insecure since the (still!) husband could refuse to permit her to leave that country.[60] Her eventual new marriage would not be recognized in her religious or ethnic community within Sweden, or in her country of origin.

Problems like this require a dialogue between the Swedish state and the communities involved.[61] One should not either forget that many Muslim practices are flexible. If a Muslim marriage contract stipulates that the wife may apply for divorce – unconditionally or upon specified grounds – this is accepted as lawful by Muslim jurists and respected.[62]

[56] Contrary to Italy, the Vatican is not a party to the European Convention on Human Rights.

[57] See also Michael Bogdan, Erkännande och verkställighet av med den europeiska människorättskonventionen oförenlig dom, Svensk Juristtidning 2003, p. 29.

[58] Note that although the overwhelming majority of the population of Turkey are Muslims, in legal contexts Turkey does not qualify as a "Muslim state". Turkish legislation originates from various other countries, for example, in family law from Switzerland. The examples in this contribution do not relate to "Turks".

[59] If a Muslim marriage contract stipulates that the wife may apply for divorce – grounds for this are often specified in detail – this would, however, be respected by the religious community.

[60] See further, Mosa Sayed, The Muslim Dower (Mahr) in Europe – With Special Reference to Sweden, European Challenges in Contemporary Family Law, 2008, p. 198–199.

[61] It is situations like this that the previously mentioned contributions concerning the accommodation of Muslims in England aimed at, see above Section 2.3.

[62] See Rubya Mehdi, Facing the enigma: talaq-e-tafweez a need of Muslim women in

In other cases, the Muslim dower (*mahr*) from the husband to the wife can be used as the wife's bargaining tool.[63] By being willing to consider to give up her right to the yet-to-be-paid *mahr*, or to return the *mahr* to the husband, the wife's position in divorce negotiations may improve considerably. At least to a certain extent, it should therefore be possible to avoid potential conflicts in advance and find a balance between what religion is claimed to require[64] and women's equal rights. More information and education of Muslim law instruments are needed also in Swedish society.

6 Understanding multiculture – the case of parental responsibilities, in particular child custody

In the Swedish experience, three issues are of a special complexity as regards parental responsibilities in a multicultural and transnational context:

* Who is the holder of parental responsibilities?;
* The increased risk for child abduction; and
* Determining the child's religion.

In this part, my contribution is limited to a brief, tentative identification of some of the most acute problems.

6.1 Who holds parental responsibilities?

The mainstream solution in the West regards both parents as holders of parental responsibilities, with equal rights and duties, irrespective of whether they are or have been married to each other and whether they live together. Divorce or separation is in itself irrelevant for the determination of parental custody. In Swedish law, for example, sole parental

Nordic Perspective, Integration & Retsudvikling, 2007, pp. 131–149.

[63] See Mosa Sayed, The Muslim Dower (Mahr) in Europe – With Special Reference to Sweden, European Challenges in Contemporary Family Law, 2008, pp. 197–199.

[64] Sayed emphasizes the religious dimensions of mahr and regards it as a religious practice, ibid, pp. 193–194.

custody is today exceptional when both parents are alive. This point of departure is not valid in all legal cultures, for example, in many of the so-called Muslim states.[65] The mother's rights of custody may be time-limited, depending of the child's age and sex, and they are subordinated to the father's rights of guardianship.[66] What happens when a family emigrates to Sweden from such a country? Does the father retain his privileged position or does the mother, once the family becomes resident in Sweden or acquires Swedish citizenship, come into an equal position with the father? Surprisingly, this issue is not settled by legislation or case law in Sweden.[67] This is a typical example of a situation where the new society lacks knowledge and insight of differences of approach.

A special solution for a situation like this is provided by the 1996 Hague Child Protection Convention.[68] According to the Convention, in situations where the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the state of the new habitual residence. Once Sweden has ratified the Convention, the Swedish outlook of equal parental responsibilities on both parents, *ex lege*, will apply to all families habitually resident in Sweden. The Convention's ratification is under preparation in Sweden, and the European Union expects all its member states to accede to this Convention.[69]

6.2 Increased risk for child abduction

The point of departure being today that both parents are holders of full parental responsibilities, the primary custodial parents, normally the mother, have become the primary abductors of children (approximate-

[65] By this concept is meant a state where the legal system in, e.g., family law bears a strong influence of Islam. I admit that this terminology remains vague but I believe that it can still bring forth the message, adequately enough. Turkey, for example, does not qualify as a Muslim state because the country's legislation is based on western models.

[66] See, e.g., David Pearl & Werner Menski, Muslim Family Law, Third Edition, 1998, pp. 410–412.

[67] See Lennart Pålsson, Svensk rättspraxis i internationell familje- och arvsrätt, Andra upplagan 2006, pp. 136–140.

[68] Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children. See, in particular Article 16.4 of the Convention.

[69] See Council Decision 2008/431/EC authorizing members states to ratify or to accede to the 1996 Hague Convention. Official Journal, L 151, 11.6.2008, p. 36.

ly 70 % of all cases).[70] The 1980 Hague Convention on International Child Abduction[71] in many cases secures the safe return of an abducted child from one contracting state to the child's home state in another contracting state. Due not least to the differences of outlook regarding parental responsibilities, the Muslim countries, for example, are not parties to the Hague Convention.[72] As regards families originating from a Muslim country or "mixed families" where the father is of Muslim origin, the father dominates as abductor.[73] Culture and traditions, and even religious beliefs, can be expected to be the underlying reason, requiring the father to act accordingly. The return of the child from a state that is not party to the Hague Convention is complicated, if at all possible. It is particularly difficult in those cases where the state to which the child has been taken regards the abducting parent as the sole custodial parent or as the child's guardian. The agnatic family structure, where children belong to the father and his family, conflicts with an equalitarian outlook.

6.3 Determining the child's religion

Joint parental responsibilities mean in many jurisdictions, Sweden included, that both parents must jointly take *all* important decisions regarding the child, for example the child's religion. Ultimately in Sweden, if the custodians cannot agree, their joint custody must be dissolved in favor of one of the parents. The sole custodial parent alone may then decide on all issues and, for example, register the child of a Muslim father as a member of the Church of Sweden. A conflict arises, since according to Islam the child of a Muslim father is always a Muslim. Converting to another religion or abandoning the faith is not permitted. In states that qualify

[70] See, e.g., Nigel Lowe and Andrew Perry, International Child Abduction – the English Experience, International and Comparative Law Quarterly 1999, p. 132, and Maarit Jänterä-Jareborg, Olovliga bortföranden av barn: dags att ställa Sverige vid skampålen? Svensk Juristtidning 2000, pp. 876–877.

[71] Convention on Civil Aspects of International Child Abduction.

[72] Of the approximately 200 nation-states in the world, around 80 states are parties to the Convention. The states parties include Turkey. As has repeatedly been pointed out, Turkey does not qualify as a Muslim state in so far as legislation is concerned.

[73] See Maarit Jänterä-Jareborg, ibid. note 70, referring to US State Departments statistics from 1994, according to which in 68 % of the non-convention cases, the father was the abducting parent.

as Muslim (majority) societies,[74] religion's role is not limited to religious beliefs, but determines a person's status, rights and applicable rules. Bearing this in mind, it could be argued that membership, for example, of the Church of Sweden cannot be put on the same footing. I would go as far as to argue that, in such cases, it is in the child's best interests that such differences are given due regard when the parents choose the child's religion. "Wrong faith" in relation to the child's father and his family may deprive the child of any opportunity to a close relationship and rights within the paternal family. From a typical Swedish (secular) perspective, the child's formal religion is irrelevant, in these and other respects.

The child's right to freedom of thought, conscience and religion are complex issues. There is no such thing as a "Christian child" or a "Muslim child", but only a child of Christian or Muslim parents.[75] Even if a child has a belief of his or her own, it risks remaining provisional while the child is developing his or her own personality.[76] On the other hand, it is widely held that respect for a person's religious beliefs requires allowing that person to pass those beliefs on to his or her children.[77] According to John Eekelaar, the "real value in allowing parents to pass on their religious beliefs to their children is respect for the privileged sphere of the parent-child relationship".[78] When religion is central in the parent's own life, its impact on this relationship cannot be ignored. The challenge is to regard the child's best interests above the parents' mutually conflicting interests.

7 Concluding remarks

The survey above shows that Sweden's response to the challenges of multiculture, brought forth by the more recent immigration into the country, has been rather dismissive. Focus has been on the extreme sides of "foreign" traditions often, however, on the basis of limited knowledge of which practices and traditions are at stake. There has been very little – if any –

[74] Note, again, Turkey as an exception.

[75] See Richard Dawkins, The God Delusion, 2007, p. 18.

[76] John Eekelaar, Family Law and Personal Life, 2007, p. 97.

[77] It can also be claimed that in this situation two human rights collide, namely the child's right to choose his or her beliefs and the parents' right to bring up the child in accordance with their religion. Sweden's Minister of Integration, Nyamko Sabuni, shares this point of view. Dagens Nyheter, 19 November 2008.

[78] John Eekelaar, Family Law and Personal Life, 2007, p. 95.

public dialogue between the majority society and the new minorities. This has resulted in a growing suspicion – and mistrust – within the majority society towards the minorities. From the point of view of the minority groups, the lack of recognition may make it even more important to stick to the group's own traditions, perhaps more forcefully than what is the case at present in the culture of origin. Instead, both "camps" should publicly articulate what they consider relevant. For the minority groups this is particularly important in order to prevent mistrust and "misrecognition". Also, more knowledge and dialogue of a religion's true content and how it should be practiced is equally relevant, not least among the followers of each faith in question. At least some of the conflicts relating to women's subordinated role could be solved in this manner.

Generally speaking, it has taken time for the Swedish majority society to respond to any challenges of cultural diversity in the form of legislative measures. Where this has been the case, it has often taken the form of "combating multiculture and diversity", by subjecting everybody to Swedish law, as the cases of divorce and marriage exemplify. On the other hand, it may well be so that these examples are too special and that they, as a result, are not illustrative, because they concern situations where fundamental values are at stake, from the point of view of the Swedish society. A well-established point of departure in such cases is that everybody is to be subjected to "the law of the land" alone.

Considering the emphasis given in Swedish family law to the individual's human dignity and autonomy, any claims based on group identity cause uneasiness. How individual identity and group identity can be reconciled still remains to be solved in Swedish society. In the processes that can be foreseen, there is reason not to lose sight of Charles Taylor's recommendation, namely that a liberal society must remain neutral on the question of what is a good life, and restrict itself to ensuring that however they see things, citizens deal fairly with each other and that the state deals equally with all.[79] In cases of conflict between individual interests and group interests, the legal machinery should give priority to the former.

A further point that I wish to make is that private international law is not a sufficient tool for the recognition of cultural diversity. In our contemporary society, a request for the recognition of other ways of living

[79] Charles Taylor, et al., Multiculturalism. Examining the Politics of Recognition, 1994, p. 57.

does not end by the acquisition of a domicile (habitual residence) in Sweden or Swedish citizenship. It continues as long as the person – or the group in question – identifies itself with something else than "the law of the land" alone, for example with religiously-based traditions that differ from those of the Swedish majority society.