



PECSA International Conference

„Connecting the European Union of Shared Aims, Freedoms, Values and Responsibilities”

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SGH Warsaw School of Economics

Aleja Niepodległości 128, Building C, Auditoriums I & II



30 YEARS OF JEAN MONNET ACTIVITIES



L'ordre public and the European Private International Law: Sharia effects on the European Family Law

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EU PUBLIC POLICY

EU institutions tend to avoid discussions about the creation of a European public policy for the Union, given that a supranational public policy may cause fragmentation with the *ordre public* of the member states.

EU member states have a margin of appreciation to define their own understanding of public policy in order to preserve their basic values.

Some treaties allow member states to derogate their obligations before the EU to safeguard their national security and interests.



COUR DE JUSTICE
DE L'UNION
EUROPÉENNE

THE EUROPEAN FAMILY LAW AND THE SHARIA

The Rome III Regulation establishes a cascade system to the party autonomy to choose the law applicable to divorce and legal separation.

Regarding the public policy, articles 10 (sexual equality) and 12 (domestic public policy) of the Rome III limit the party autonomy.



Sharia is a legal system based on an ethic-religious structure that every Muslim must obey.

It also plays a role in the domestic law of Muslim countries. The Islamic Family Law, for example, is heavily based on the Sharia.

Some countries might have a Sharia-based courts that regulate some family law issues.



CASE-LAW STUDY

- As of June 2018, the EUFam's database catalogued four cases with regards of the application of The Rome III in cases involving the Sharia: a case in Spain, another in Italy and two in Germany.
- The German cases are the most relevant because they deal directly with public policy issues, such as the repudiation of women and divorces made before religious courts.
- One of them was later submitted to CJEU (**the Sahiouny case**), which ruled that the Rome III does not cover private divorces made before a religious court, hence divorces need to be applied before public authorities.
- Although these cases handle with public policy issues, none of them addressed articles 10 and 12 of the Rome III. Thus, a sturdier case-law on the subject is a must in order to better apply the EU private international law.

