



Universiteit
Leiden
The Netherlands

Family law in Syria: a plurality of laws, norms, and legal practices

Eijk, E. van

Citation

Eijk, E. van. (2013, September 19). *Family law in Syria: a plurality of laws, norms, and legal practices*. Retrieved from <https://hdl.handle.net/1887/21765>

Version: Corrected Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/21765>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/21765> holds various files of this Leiden University dissertation.

Author: Eijk, Esther van

Title: Family law in Syria : a plurality of laws, norms, and legal practices

Issue Date: 2013-09-19

6 The Catholic Court: Guardian of Order and Sacraments

Chapter 2 provided a description of the Christian communities of Syria in general and their legal position in particular. This chapter singles out one Christian community, i.e. the Catholics. The chapter will expound the Catholic law of personal status of 2006 and the workings of a Catholic court in Damascus. In the previous chapter, I described legal procedures and practices associated with *shar'iyya* courts in Damascus, based on material collected during my fieldwork. At the same time, I observed cases at the first instance Catholic court of Damascus. The focus of this chapter is on the Catholic personal status law and the application thereof by the Catholic judges, focusing on marriage nullification proceedings undertaken in this court, as they make up the majority of cases.

Each personal status court has its own characteristics, routine and distinctive character. This is determined by various factors, including the historical development of Syria's legal system and the position of religious minorities therein, and the influence of the (trans-national) Mother Churches. I contend, however, that the Catholic courts of Damascus are rather unique when compared to other courts. The reason for this is, in my opinion, their alliance with the Church of Rome.

The Syrian Catholic personal status law is predominately based on canon law issued by Rome and, what is more important, the Catholic judges are trained in this canon law at Pontifical colleges in Rome. Taking this into account, the question arises if and, if so, how this alliance with Rome (through legislation and instruction) affects the administration of justice for Catholics in Syria.

As mentioned before, the argument in the second part of my thesis is that presence and importance attached to patriarchal norms and values on marriage and family relations are a common denominator of the various (i.e. *shar'iyya*, Catholic and Greek-Orthodox) personal status courts of Damascus. I assert that patriarchal gender roles in marriage and family, which includes matters such as obedience of women and upholding the family honour, are emphasised and reinforced time and again by the different actors involved, i.e. judges, lawyers, litigants, and witnesses.

This attachment to cultural gender norms clearly manifests itself in the extensive examination of litigants and witnesses, as will be demonstrated in the course of this chapter.

6.1 Eastern Catholic Churches in Syria

In Syria there are six Catholic denominations that recognise the (judicial) authority of the Pope, i.e. Melkite Greeks, Maronites, Armenian Catholics, Syriac Catholics, Latins, and Chaldean Catholics.³¹⁴ These Eastern Catholic Churches are united in communion with the Bishop of Rome, the Pope.³¹⁵ The Catholic Church is made up by 22 *ecclesiae sui iuris* (i.e. 'particular' or 'self-governing' churches), each church *sui iuris* is headed by a patriarch, major archbishop, metropolitan or other hierarch. Worldwide there are 22 *ecclesiae sui iuris*, the Latin (or Western) Church is the biggest 'self-governing' church, the other 21 churches are collectively called the Eastern Catholic churches (Faris 2000: 32).

Despite the 'particularity' of the various Eastern Churches, they are collectively governed by one Code, i.e. the Code of Canons of the Eastern Churches, originally published in Latin as the *Codex Canonum Ecclesiarum Orientalium* (hereafter: CCEO).³¹⁶ The CCEO was issued by the late Pope John Paul II on 18 October 1990 and came into effect on 1 October 1991. It applies to all members of the Eastern Catholic Churches, who (in addition to Syria) can be found in countries like Egypt, Lebanon, Jordan, Iran but also Albania, Croatia, Russia, Ukraine, Belarus, India, Ethiopia; in addition to (diasporic) communities in Latin America, United States of America, Canada, Australia, and Europe. The CCEO governs the ecclesial life of the Eastern Churches and covers various branches of the church, including the organisation of the church, the clergy, religious practices

³¹⁴ See chapter 2 for a more detailed description of the Christian communities of Syria in general and their legal position in particular.

³¹⁵ In contrast, the Orthodox churches, which together form the vast majority of Christians in Syria, are not united under a single authority (chapter 2).

³¹⁶ It has to be noted that Catholics who belong to the Latin Church are officially governed by the Latin Codex (the Code of Canon Law or *Codex Iuris Canonici* of 1983), see Can. 1 CCEO and 38 CLPS. Article 1 CLPS stipulates that the Catholic courts in Syria can also hear cases of Latin Catholics but, with regard to marriage and nullifications, they are subjected to the canons 1055-1165 (Title VII 'Marriage') of the Latin Codex (see article 38).

such as prayer, celebration of the Eucharist and other sacraments, most importantly (for this study) marriage.

6.1.1 The legal position of Catholics in Syria

To recapitulate what is explained in chapter 2: the legislative and judicial autonomy of the Catholic churches, like the other Christian churches, is to a significant extent regulated by the 1953 Syrian Law of Personal Status (the SLPS). The SLPS grants the Druze, Jewish and Christian communities limited legislative and judicial autonomy. Article 306 provides that: 'The provisions of this law apply to all Syrians except for what is stated in the following two articles.' Article 307 refers to the Druze community; article 308 is the provision pertaining to Jews and Christians. The latter article is of great importance, in fact, it is the central article concerning the applicability of personal status laws for Christians. It stipulates that Christians and Jews are competent to apply their own religious regulations in certain specified matters, most importantly marriage and divorce. For the Catholics, however, this article (temporarily) lost its significance in 2006, as we shall see in the following paragraphs.

Furthermore, the SLPS, in relation to non-Muslim family laws and the administration of these laws, has to be considered in conjunction with other statutory laws: first of all, the Law of Judicial Procedures of 1953. Article 535 of this law restricts the exclusive or general jurisdiction of the *shar'īyya* courts (i.e. jurisdiction over all Syrians regardless of their religion) to the matters of personal status listed in this article, such as legal guardianship (*wilāya*), paternity (*nasab*), and maintenance of relatives and children (Moslih 2008: 135). In other words, the *shar'īyya* courts are the general competent courts to hear cases involving non-Muslims in (these) specified matters. However, in all other personal status matters the different non-Muslim personal status courts are competent to adjudicate cases involving members of their own denomination, for example in matters pertaining to marriage and marriage dissolution.

The second law that is of importance is the Judicial Authority Law of 1961. Article 36 of this law reads that the religious (*rūḥīyya*) courts of the non-Muslims communities continue to be regulated by the 1936 Resolution no. 60/L.R., dating back to the French Mandate period. This Resolution, promulgated on 13 March

1936 by the French High Commissioner De Martel, grants specific religious communities the right to draw up their own family laws and courts to adjudicate matters of family law (El-Hakim 1995: 148). Hence, the Catholic communities, like the other Christian communities, have been partially subjected to the provisions of the SLPS (pursuant to article 308) since 1953. However, the family law position of the Catholics changed significantly in 2006 and then again in 2010.

6.1.2 The 2006 Catholic Law of Personal Status

In chapter 3, I described how the Catholic Churches in Syria managed to obtain a new law of personal status (i.e. the CLPS) in June 2006. The CLPS was considered a revolutionary law because it granted the Catholic courts full jurisdiction in all matters of personal status.³¹⁷ Furthermore, the law recognised delicate rights as adoption and equal inheritance rights for men and women. The exceptional position of the Catholics vis-à-vis the other Christian groups was subject to criticism. Particularly non-Catholic Christians were discontented that they were put in a false position in relation to the Catholic Churches with regard to the SLPS and the *shar'iyya* courts.

The Catholics' *status aparte* in family law was changed in September 2010, when an amendment was made to article 308 SLPS. Presidential Decree No. 76, issued on 29 September 2010, amended article 308 to such an extent that the special jurisdiction of the Christian and Jewish communities over personal status matters (now) also extended to inheritance and bequests. Before the 2010 amendment, these matters belonged to the competence of the *shar'iyya* courts. With the issuance of the amendment, the government responded to the dissatisfaction reigning among non-Catholic Christians, who felt discriminated against. The second article of the amendment is of particular interest to the Catholics of Syria but at their expense. The article states that provisions of the Syriac Orthodox PS Law, Greek Orthodox PS Law, and the Catholic PS Law, pertaining to matters of personal status other than those listed in the revised article 308, are abrogated by the amendment. As a

³¹⁷ Fortunately, my fieldwork in the Catholic court of Damascus (February-July 2009) fell within this exceptional period (2006-2010), namely from. However, I did not observe any court cases involving adoption inheritance.

result, the amendment rendered a substantial part of the CLPS inoperative, which meant that its regulations, for example, adoption, legal guardianship, paternity (or descent), are no longer applicable. Due to this amendment, the Catholics again fall under the scope of article 308 and thus back within the competence of the *shar'iyya* courts.³¹⁸

What this amendment means for the current status of the CLPS remains unclear.³¹⁹ For example, article 280 of the CLPS reads that the law can be regarded as an amendment to article 308 SLPS, meaning that the CLPS 'abrogates' article 308 SLPS, thereby excluding the Catholics in Syria from application of the SLPS (Moslih n.d.: 7). Article 281 states that all Catholics of Syria are solely governed by the provisions of the SLPS, not by any other laws of personal status and – moreover – that its denominational courts have full jurisdiction over all personal status matters pertaining to Catholics. Clearly, these articles are no longer applicable but what will happen next? Will the Catholics (have to) promulgate a new law or will they be able to use the current one and simply leave parts of it untouched? Also, will all rulings given by the Catholic courts given between 2006 and 2010 contrary to article 308 SLPS be quashed by the Court of Cassation? These are just a few of many questions that require clarification and (also) remain a subject for further study.

Since I conducted my fieldwork in 2009, I will – in the discussion of the CLPS and its application by the Catholic courts – take the 2009 situation as the point of departure. Besides, the 2010 amendment had no effect on the issues discussed in the remainder of this chapter, i.e. the substantial provisions and proceedings pertaining to marriage and nullification of marriage.

The relation between the CLPS and the CCEO

The version of the CLPS I used for this study consists of the full text of law no. 31/2006 (565 articles in total) *and* the Arabic translation of Title XVI, Chapter VII 'Marriage' of the CCEO in its entirety (i.e. Cann. 776-866), as a supplement to the

³¹⁸ See also Al-Bunni 2010.

³¹⁹ Due to the revolution in Syria, which started in March 2011, I have not been able to return to Damascus and have therefore not been able to follow up on this issue.

law. The inclusion of this chapter of the CCEO in the CLPS is pursuant to Article 38 of the CLPS, which states that all Catholics are subjected to the provisions of the CCEO pertaining to marriage and the dissolution thereof.

As mentioned earlier, a significant part of the CLPS is a direct translation of the CCEO. In addition to canons 776-866 (Title XVI on sacraments, Chapter IV 'Marriage'), other canons that are of interest to this study, and copied into the CLPS are, most importantly: Cann. 1055-1356 (Title XXIV and XXV on the ecclesiastical judiciary and its procedures) and Cann. 1357-1384 (Title XXVI, Chapters 1 and II 'Marriage Processes'). A significant section of these canons is incorporated in its entirety in the CLPS, as becomes evident from the numerous references made to them in the CLPS. Throughout this chapter I will refer, when applicable, to both the CLPS article concerned and the corresponding canon.

6.2 Damascus Catholic court: Guardian of order and the sacraments

The majority of the cases brought to the Catholic court, similar to the other personal status courts, were nullification of marriage petitions. I deliberately use the word 'nullification' (*buṭlān*) and not the word 'divorce' (*ṭalāq*), because according to Catholic doctrine a marriage cannot be dissolved due to its sacramental nature. The Church however accepts annulment of marriage but only when it is proven that a marriage was null or invalid from the beginning, as will be explained below.

The Damascus Catholic court always reacted fiercely whenever a litigant, witness or lawyer used the word 'divorce' (*ṭalāq*) instead of 'nullification' (*buṭlān*). This example to me is illustrative for the strict stand the Catholic court, following church doctrine, took on divorce and only accepted annulment of marriages in exceptional cases. The proceedings in the Catholic courts and the demeanour of the judges were different, in my observation, from the Greek Orthodox, court for example. The Catholic judges were well-versed in the canonical structures, language and ethics, chiefly – in my opinion – because they received a thorough education in Rome. In the following paragraphs, I will provide more examples to support this argument.

As mentioned earlier, the second argument of this chapter is that shared patriarchal norms and views on social propriety, marriage and family are emphasised and reinforced by all the participants in the family law arena. Nullification proceedings in the Catholic courts of Damascus were pre-eminently suitable to observe the prevailing or desired standards of acceptable behaviour between spouses. In the following paragraphs, I will give a description of a Damascus Catholic court in action, which principally concerned nullification proceedings.

6.2.1 Inside a Catholic *ruḥiyya* court

The Catholic courts are competent to hear cases involving members belonging to the six Catholic churches in Syria, i.e. Greek Melkites, Maronites, Armenian Catholics, Syriac Catholic, Latins, and Chaldean Catholics (Art. 1 CLPS).³²⁰ There is a first instance court in every eparchy (i.e. diocese), thus in Damascus, Aleppo, Homs, Lattakia, Bosra, Qamishli, and Hassakeh.³²¹ The Catholic court of appeal of Syria is situated in Damascus. In special circumstances, the Vatican 'Rota' court in Rome can hear appeals from decisions of the Catholic (appellate) courts. However, the Court of Cassation remains the court of last resort (El-Hakim 1995: 149).

During my fieldwork, the first instance court of Damascus and the court of appeal were both housed in a building on the premises of the Melkite Greek *Zaytoun* church, tucked away in a calm spot amid the hustle and bustle of the Christian quarter of the old city. The Damascus' Catholic court premises were a haven of peace, especially compared to its *shar'iyya* counterpart. The courtroom and the neighbouring court's registry, i.e. the *dīwān*, were located on the ground floor of a building which also served as a centre for educational and religious activities organised by the church. During the court's office hours, lawyers, litigants, and witnesses usually hovered around the courtroom or were waiting in the designated waiting room, chatting and drinking coffee with the clerk in his office

³²⁰ That is to say, the provisions of the CLPS apply only to those who are baptised or received into the Catholic Church (Arts. 10 and 29 CLPS and Cann. 8 and 29).

³²¹ Information taken from the following website: <http://www.catholic-hierarchy.org/diocese/qview6.html#sy>, accessed 18 May 2011.

(which also served as the court's registry), while waiting their turn to enter the court.

The first instance court and the court of appeal were presided over by two different judges, father Elias and father Antoun. They operated from the same courtroom but on separate days. The first-instance court worked on Monday and Wednesday mornings, father Elias presided over the first instance court on Monday. The Wednesday first instance court, as well as the court of appeal, was presided over by father Antoun. Because the Wednesday first instance court heard significantly less cases than the one on Monday, the court of appeal (after a short intermission) opened its doors immediately following the first-instance court sessions. The first-instance court occasionally scheduled an extra session on Thursday mornings, if the circumstances so required, for example in order to catch up after a bank holiday. Since I mainly attended sessions of the Catholic first-instance court, I will refer only to the first-instance court proceedings in the remainder of this chapter.

During the time I observed court hearings, I calculated that the first instance court heard about fifteen cases on average on Mondays (the busiest court day) and about eight cases on Wednesdays.³²² Again, the vast majority of them concerned nullification of marriage petitions. The cases ranged from cause-list sittings where lawyers handed in documents (*mudhakkirāt*) or just came in to make an appointment for a next session, but also cases that involved lengthy witness testimonies for example. What struck me, especially in comparison with the court proceedings at the *shar'īyya* courts, was that the judges were very strict in their observance of the court's agenda. For example, lawyers were required to make appointments for future sessions before 10 a.m. If they appeared in court past 10 a.m. to make an appointment, they would be reprimanded by the judges. Indeed, court sessions at the Catholic courts were generally very orderly, with cases processed one at the time. In my opinion, the Catholic judges distinguished themselves by their procedural tenacity.

³²² Over the course of four months in which I visited the Catholic first-instance courts of Damascus, I counted a total of 213 cases that were dealt with during my presence in the courts. This number, however, is based on personal calculations and by no means an exhaustive number. In addition, the majority of the 213 'cases' include reappearing cases, meaning that I saw several cases at different stages of the proceedings.

One could argue that Catholic judges, and other Christian judges or judges belonging to another minority, can afford the luxury of being meticulous, contrary to their colleagues working at the *shar'iyya* courts, who have to handle a considerably heavier workload. The Christian judges have to handle a considerably lower number of cases compared to their Muslim counterparts, if only because the (total) number of Christians in Syria is much smaller (ten per cent of the total population, vs. roughly 85 per cent Muslims).

Be that as it may, still in none of the other personal status courts I visited the judges were (or at least appeared to be) as rule-conscious and orderly as they were in the Catholic courts. The judges belonging to the biggest Christian 'group', i.e. the Greek-Orthodox (503,000 souls vis-à-vis 204,600 Catholics, see chapter 2), were also confronted with considerably less cases. Nevertheless, they were much more relaxed and informal during the court proceedings than their Catholic colleagues, who took on a much more weighty and formal stand in their handling of annulment petitions. The Catholic nullification proceedings (see below) were generally lengthy and complicated, whereas the Greek-Orthodox divorce proceedings were not. This can partially be explained by the fact that the Greek-Orthodox Church does accept divorce; it is possible that – because of its more tolerant stand on divorce – the Greek-Orthodox judges proceeded more pragmatically in their treatment of divorce cases.³²³ Their way of working and their interaction with lawyers, litigants and witnesses bore, in my opinion, more resemblance to what happened in the court of judge Ibrahim (chapter 5).

That being said, I believe there is another reason why the Catholic judges were very strict when it came to procedures, compared to their colleagues of the *shar'iyya* and the Greek-Orthodox courts. My explanation for this finding lies in the fact that they received their canonical training in Rome. If a Catholic priest wants to work as a clerical judge, he is required to obtain a license in Oriental canon law from the Pontifical Oriental Institute in Rome.³²⁴ During this thorough three-years training in canon law the candidate judges are educated in the Eastern Codex, including the extensive regular procedures that need to be followed in any ecclesiastical trial.

³²³ Rabo writes that the Orthodox communities have become more liberal in granting divorce since the 1970s and 1980s (2012b: 87).

³²⁴ For more information on the Pontifical Oriental Institute, please refer to their website: <http://www.pontificio-orientale.com>

To verify whether the hypothesis that the evident procedural attitude of Catholic judges has its origin in their training in Rome is grounded, would require further research, possibly involving comparative research on other Catholic courts in Syria or the Middle East and research on the place of training, i.e. the Faculty of Oriental Canon Law in Rome.

6.2.2 A truly ecclesiastical court?

In accordance with the regulations of the CCEO, the Catholic first instance court of Damascus consisted of three judges,³²⁵ a scribe (*kātib*), the 'promoter of justice'³²⁶ (*wakīl al-'adl*), and the 'defender of the marital bond' (*al-muḥāmi 'an al-withāq*).³²⁷ As a rule, the 'defender of the marital bond', sitting on the right hand side of the presiding judge, objected to a nullification request presented to the court, as it was his task to preserve and defend the marital bond.³²⁸ The 'promoter of justice', on the other hand, was responsible for the common good (*al-khayr al-'āmm*) and had the authority to ask the court for nullification of a marriage if he thought it was better for a couple to 'divorce' (Arts. 313-315, 542 CLPS; Cann. 1094-1096, 1360 CCEO). For example, when it is established that a husband and wife are in fact brother and sister, it is the responsibility of the 'promoter of justice' to ask for nullification of the marriage. One of the two first instance judges at the Damascus Catholic court, Fr. Antoun, informed me that in the fifteen years that he had been a judge, the 'promoter of justice' had never filed a nullification request to the court.³²⁹ In other words, *butlān* petitions were always filed by a husband or a wife, i.e. the litigants.

³²⁵ On the competence of collegiate tribunal (three judges), see Art. 303 par 1 sub b CLPS and Can. 1084 par 1 CCEO.

³²⁶ The English translations of the CCEO used in this study are taken from the *Code of Canons of the Eastern Churches, Latin-English Edition, New English Translation*, prepared under the auspices of the Canon Law Society of America (2001).

³²⁷ On the composition of an ecclesiastical tribunal and the required qualifications for the officers of the tribunal, see Art. 305-320 CLPS and Can. 1086-1101 CCEO; interview with judge of the first instance and appeal Catholic court Fr. Antoun, 26 March 2009, Damascus.

³²⁸ Interview with judge in the first instance and appeal Catholic court Fr. Antoun, 26 March 2009, Damascus.

³²⁹ Interview with judge in the first instance and appeal Catholic court Fr. Antoun, 26 March 2009, Damascus.

To recapitulate, the Damascus first instance Catholic court consisted, at least in theory, of six persons. From what I saw, however, the court was only complete when a *buṭlān* petition was brought before the court for the first time, given that the ‘defender of the bond’ has to have the opportunity to object to a *buṭlān* request. The court was also fully staffed when a *buṭlān* was announced (*i’lān*) and at sessions when the court of appeal gave the final decision (*ḥukm*) on *buṭlān* (more on these procedural differences below). During regular sessions, i.e. the majority of the sessions, the court was never fully staffed; usually only two judges and the scribe would be present.

The court sat on a raised dais behind a long, skirted table (*qaws al-mahkama*). The litigants, for their part, sat behind a table facing the court. Each party had its designated place: the petitioner was seated on the right hand side of the court, the respondent on the left hand side, both usually accompanied by their lawyers. As we saw in the previous chapter, the situation in the *shar’iyya* courts was quite different, where lawyers, litigants and witnesses often seemed to be caught up in a fight to try to get the judge’s attention.

The rest of the courtroom was occupied by wooden benches on which family members, lawyers, litigants, witnesses, and others awaited their turn. The bare white-washed walls were decorated with only a picture of the Syrian President, Bashar al-Assad and a simple wooden crucifix. Each court day commenced with a community prayer led by the presiding judge, facing the crucifix hanging over the court table. Once the court seated itself, everyone else followed suit.

The community prayer was a small but significant example of the specific environment in which the Catholic court operated. The Catholic court came across as a truly ecclesiastical court. There were a number of factors contributing to this observation: First, the fact that the court was situated on the church premises. Secondly, the judges themselves: in a Catholic court, like in all Christian courts, the judge is a priest. The Catholic judges received their training outside Syria; they were required to obtain a degree in Oriental canon law in Rome. Furthermore, the judges’ and court personnel’s attire were quite distinctive, i.e. the judges were

dressed in a cassock (clerical robe), the other court personnel usually wore a clerical collar. Another example, whereas a *shar'iyya* judge would be addressed as '*ustādh*' (polite form of address for an educated, respectable person), a Catholic judge preferred to be addressed as '*abūnā*' (i.e. 'father'). In fact, litigants or lawyers would be corrected by the judges or the scribe if they used the word '*ustādh*' by mistake. These are just some examples of the external characteristics of the court, when one looks at the substantive aspects of the proceedings and the applicable law, the ecclesiastical nature of the court becomes even more apparent.

6.3 The indissolubility of a sacramental marriage

In chapter 4 and 5, we saw that a Muslim marriage is a contract between the bride and groom, and therefore considered a contractual relationship. A Christian marriage is different from a Muslim one in many ways, most importantly because an Eastern Christian marriage is considered a sacrament (in Arabic: *sirr al-zawāj*). The Code of Canons for the Eastern Churches defines marriage as follows:

'By the marriage covenant (*'ahd al-zawāj*), founded by the Creator and ordered by His laws, a man and woman by irrevocable personal consent establish between themselves a partnership of the whole of life; this covenant is by its very nature ordered to the good of the spouses and to the procreation and education of children.' (Can. 776 §1 CCEO)

and:

'By Christ's institution, a valid marriage between baptised persons is by that very fact a sacrament in which the spouses are united by God (..)' (Can. 776 § 2 CCEO)

The fact that marriage is considered a union before God is an essential property of a Christian marriage, therefore dissolving such a union is deemed problematic. Paragraph three of canon 776 explicitly cites 'indissolubility' as another essential property of marriage. Although the Church strongly condemns and discourages it, in reality a marriage can be dissolved but never by divorce. The Catholic Church

even renounces the very word ‘divorce’ (*ṭalāq*) and only acknowledges nullification of a marriage (*buṭlān al-zawāj*), meaning that the spouses have to prove that the marriage was unsound from the very beginning. Through annulment, a marriage can be terminated but only those marriages that were never valid in the first place because of lack or absence of matrimonial consensus (Cann. 817-27 CCEO). In the eyes of the Church such a marriage never legally existed (Pospishil 1968: 604).³³⁰

It should be noted, however, that the Catholic Church does recognise ‘legal separation’ (*infīṣāl*),³³¹ in the event of adultery and mental or physical danger (Cann. 863-66 CCEO). It means that an ‘innocent spouse’ has a right to separation (i.e. he/she will no longer be required to continue conjugal co-habitation) but it will not dissolve the marital bond.

The fact that ‘divorce’ is a difficult concept in the Catholic Church also becomes apparent by the lengthy proceedings of a *buṭlān* case. Marriage nullification cases took a long time before a settlement was reached, which might provide an additional discouragement for a couple looking to divorce. The CCEO stipulates that every *buṭlān* ruling issued by a first instance court has to be affirmed by an appellate tribunal (Can. 1368). Therefore, when the Damascus first instance court concluded that a marriage could be nullified, it ‘announced’ the nullification. After this announcement (*i’lān*), the nullity decision was transferred to the appellate tribunal for review (Art. 550 CLPS, Can. 1368 CCEO). This court reviewed the case again and when it concluded that indeed the marriage was void, the appeal court would give a *buṭlān* ruling (*ḥukm*); only then the marriage was annulled.³³² That is why it generally took at least a year and a half to conclude a case.

The procedure of a *buṭlān* announcement, as well as a ruling, was accompanied with considerable ceremony. The court was present with a full complement of the court, i.e. three judges, the ‘promoter of justice’, the ‘defender of the marital bond’, and the scribe (see above). Everyone present in the courtroom (the litigants

³³⁰ Although children born during such a marriage are recognised by the Church and remain legitimate (Pospishil 1991: 490).

³³¹ Also known in ‘divorce of bed and board’ or as ‘séparation de corps’ (in French).

³³² Interview with judge in the first instance and appeal Catholic court Fr. Antoun, 26 March 2009, Damascus.

themselves did not have to be present) stood up when the *buṭlān* announcement was read out loud. The presiding judge read out the decision: saying ‘in the name of the Father, the Son and the Holy Spirit, the court has decided that the marriage between ... is declared void, because...’, thereby stating the reasons for the nullification of the marriage in question. The announcement ended with everyone making the sign of the cross.

6.3.1 *buṭlān al-zawāj*: Nullification of a marriage

Petitions for nullification of a marriage (*buṭlān al-zawāj*) made up, by far, the majority of the cases at the Catholic court in Damascus. When husbands filed a case for *buṭlān*, they commonly presented arguments such as: ‘My wife left the marital home to stay with her family without informing me’, or ‘She does not fulfil her marital or household duties because she is always out of the house.’ When a wife leaves the marital home without her husband’s consent and this claim is accepted by the court, she will lose her right to maintenance (*nafaqa*). As we saw in the previous chapters, this maintenance-obedience equation is a shared patriarchal norm and laid down in the SLPS as well as Christian personal status laws. In the Catholic court, abandonment by the wife was one of the most commonly heard claims filed by men. Female petitioners, for their part, often presented arguments along the lines of: ‘My husband avoids his marital duties because he does not support me financially’, or ‘My husband threw me out of the house and took my money and gold’, or ‘My husband beats me’.

Strikingly, the petitioners³³³ were predominantly male. Of the 86 cases in which I was able to determine the gender of the petitioner/respondent, the petitioner was male in 54 cases, and 32 times the petitioner was female. Contrary to the *sharʿiyya* courts and the Greek Orthodox court of Damascus where the majority of the petitioners was predominantly female. I can, however, not support this claim with

³³³ The CCEO speaks of ‘petitioner’ and ‘respondent’, see for example Cann. 1134 ff. Therefore I will employ these terms when discussing Catholic personal status cases, instead of the terms ‘plaintiff’ and ‘defendant’ as used in chapter 5. In Arabic no such distinction is made; in the Syrian different personal status laws and courts, the terminology is one and the same, i.e. *al-muddaʿī*, meaning plaintiff or petitioner, and *al-muddaʿī ʿalayhi*, meaning defendant or respondent.

substantive quantitative evidence. This observation is based on personal calculations, i.e. cases I was able to observe while present in the courts, sometimes aided by the clerks of the respective courts, who would fill me in who the petitioner was in a case that was on trial. The observation that predominantly women brought judicial divorce cases to the *shar'iyya* courts was also supported by acquainted lawyers, based on their experience working in these courts. I have no explanation as to why more men filed a *buṭlān* petition vis-à-vis women. Possibly it was a question of money, as *buṭlān* proceedings are long and complicated. Litigants need a lawyer to assist and guide them through the lengthy and complex proceedings. Bearing in mind that the division of labour in Syrian households is generally patriarchal, also among Christians, it means that a husband usually is the breadwinner and a wife the (unpaid) housewife. For that reason it might be difficult for a wife to start (and continue) a *buṭlān* case, having to pay lawyer's fees that accumulate during the course of the proceedings.

The nullification process began with establishing whether the court accepted a petition for nullification. Then, if the court accepted the petition, it would investigate whether the validity of the marriage was rightfully challenged. Several facts had to be established: To begin with, whether there was indeed – if so alleged by the petitioner – a diriment impediment that rendered the marriage null and void. Canon 790 § 1 reads as follows: 'A diriment impediment renders a person unqualified to celebrate marriage validly', which means that the impediment remains and thus no valid marriage came about. Examples of diriment impediments are: impotence, marriage with a non-baptised person, consanguinity, and affinity (Cann. 801, 803, 808, 809 respectively).³³⁴

The most common ground for contesting the validity of a marriage investigated by the court of Damascus was the claim that there was a defect of matrimonial consent (Cann. 817-827). A defective consent implies that one or both parties do not have the necessary knowledge to choose marriage and understand the obligations resulting from the marriage consent. First of all, both parties should be of age and of sound mind upon entering marriage. In addition, they have to

³³⁴ Whether or not such impediments exist ought to be investigated by a priest before the marriage is celebrated (Can. 785).

have the ability to understand, foresee and the willingness to take on the essential obligations resulting from a marriage (Pospishil 1991: 337-339). A couple entering marriage has to understand 'that marriage is an enduring, permanent relationship between a man and a woman, ordered to the procreation of children through some sexual cooperation.' (Can. 819) Furthermore, when a person was coerced into marriage or when a marriage is based on a condition, for instance excluding an essential element of marriage such as producing children, renders a marriage invalid (Cann. 825-826). The court also needs to investigate whether the proper form for the celebration of marriage was observed (Cann. 828-842). Meaning that, for example, an Eastern Catholic marriage has to be celebrated in church in public, not secretly (see below), in the presence of a priest who is authorised to validly bless the marriage, in addition to at least two witnesses.

6.4 Reconciliation: Return to marital life

In the Catholic court the judges considered it their spiritual duty to seek reconciliation (*muṣālaḥa*) between the spouses in order to avoid nullification of a marriage. The Church's focus on reconciliation is a natural one, for marriage is considered a sacrament. As explained earlier, according to the Church, divorce or dissolution contradicts the sacramental nature of marriage and is correspondingly difficult to obtain.

Before one or both spouses could file a claim for nullification of the marriage, the couple first had to turn to the local priest (*khūrī*) to try to reconcile their differences. Only when no reconciliation could be reached were they able to refer to the court. At every stage of the case, the court would try to reach reconciliation between the spouses,³³⁵ or in the words of a Catholic judge: 'The door to reconciliation remains always open!' (*bāb al-muṣālaḥat dā'imān maftūḥ!*).³³⁶

Canon 1362 CCEO reads:

³³⁵ Art. 322 CLPS and Can. 1103 § 2 CCEO regarding trials in general; Art. 544 CLPS and Can. 1362 CCEO regarding nullification processes.

³³⁶ Interview with Fr. Eliyas, judge in the Catholic first-instance, Damascus, 12 March 2009.

‘Before accepting a case and whenever there seems to be hope of a favorable outcome, a judge is to use pastoral means to induce the spouses, if possible, to convalidate the marriage and restore the partnership of conjugal life.’

This duty imposed on the judge is, however, not absolute. When there is no hope of success or when, for example, a permanent psychic defect is the cause for the defective consent, an attempt to save the marriage ‘no matter what’ would be pointless (Pospishil 1991: 448-49). Cox in his commentary on the identical Latin canon (c. 1676) admits that ‘[n]ormally, when a petition reaches a tribunal, there is little or no reasonable hope of reconciliation.’ (2000: 1769)

Before accepting a *buṭlān* case, a judge is thus obliged to use pastoral means to persuade the disputing spouses to settle their differences. In the Damascus court, this meant that when a claim for *buṭlān* was submitted to the court the couple were usually given 1-2 months to try to reach reconciliation. If after that period they still did not settle their differences and persisted in their refusal to continue the marriage, the spouses were invited before the court for a reconciliation session. At a *muṣālaḥa* session in court, the lawyers, and anyone else present in the courtroom, had to step outside while the court talked to the disputing couple. Fortunately, I was allowed to stay and thus witnessed several *muṣālaḥa* sessions being held in the courtroom. For example the following case:

A young couple entered the court room. The wife, Michelle, who appeared to be in her late twenties, had filed a case for nullification of her marriage. Since this was their first appearance in court, the judge wanted to talk to the couple alone without the lawyers present. The couple had been married for somewhat over a year and lived in France until recently. Michelle said that it had become impossible to live together because her husband, Yusuf, only married her to take advantage of her, more precisely her French nationality. Yusuf did not work and depended on her. Yusuf, on the other hand, claimed that Michelle did not want to have children and that there was no marital life to speak of. The judge asked Michelle whether this was true, whether she wanted to have children or not. She

replied that she wanted to have children but not with him. Michelle refused reconciliation, she thought that it was impossible to continue this marriage and she said that continuation would be unfair to both parties. This answer upset the judge and he asked her angrily, 'do you think marriage is a game? You married in a Catholic church, under God's eyes, in His house'. The judge reminded her that there had to be an 'essential' reason for *buṭlān*, otherwise the court could not and would not nullify the marriage. Therefore it was better for them to reconcile their differences and make the marriage work; the judge told them to 'invoke the Lord and reconcile!' Michelle and Yusuf, however, persisted in their claim. The lawyers were summoned back to the court room and the judge informed them that the court had tried to persuade the couple to drop their claim, but to no avail.³³⁷

Muṣālaḥa sessions in the courtroom generally did not last very long, usually around ten minutes. If the court saw an opportunity for actual reconciliation the couple was told to go (back) to their priest and try to settle their differences with his help and the help of family and friends. The court seemed to really put their backs into it when it concerned young couples. When young couples appeared in the court room, the judges tended to speak to them in a moralistic preachy tone. They would, for example, remind the spouses they got married in a church, in God's House, as we saw in the reconciliation session of Michelle and Yusuf. If the court got the impression the couple did not try hard enough to make the marriage work, they would be told to first seek counselling with their local priest and try to get their marriage back on track. Occasionally, the court suggested to conduct additional (one-on-one or joint) reconciliation outside the court office hours; a couple (or separately) would then meet with the judges in the judge's office on another day.

As we saw in the previous chapter, many marital disputes in Syria have increasingly been taken to court, among all religious groups.³³⁸ Despite the

³³⁷ Case E, Catholic first-instance court, 12 March 2009, Damascus.

³³⁸ Unfortunately, there are no detailed statistics on divorce available, for none of the religious groups (see also chapter 5 § 5.8).

principle of the indissolubility of marriage, marriage nullity cases form the vast majority of Catholic court trials, not only in Syria but worldwide (Cox 2000: 1760). During my time in Damascus, I was told that the number of couples seeking divorce or annulment had gone up the last decades, both in the Orthodox and Catholic communities. Nowadays, couples filing for divorce were primarily young, which appeared to be a widespread phenomenon in many personal status courts. While this observation cannot be supported by quantitative evidence, the trend was also observed by various legal practitioners with whom I interacted during my fieldwork in Damascus. For instance, during one of Michelle and Yusuf's interrogation sessions (see below) I had to wait in the court's registry (the *dīwān*). Earlier I had been told that the number of *buṭlān* petitions increased rapidly over the last decade. I asked the Registrar what he thought the reason was for the recent increase in *buṭlān* cases. He explained that nowadays many wives have a job and no longer depended on their husbands. Besides, he added, these days newlyweds did not try hard enough to make the marriage work: 'Many women are not like our mothers who stayed at home and were more tolerant towards their husbands'.³³⁹ A senior female lawyer had told me earlier that the families of the spouses are equally to blame, because they often worsened the disagreements between the husband and the wife (see examples below).³⁴⁰

During the various stages of Michelle and Yusuf's case, like in all cases presented in the Damascus Catholic court, the court repeatedly emphasised the importance of preserving or restoring the marital bond. One could argue that the lengthy procedures kept this hope of reconciliation alive. However, when the court tried but could not see any hope for reconciliation, the petition would be accepted, provided a ground for nullity had been established. Once the petition was accepted, the nullification process was taken to the next level.

³³⁹ Personal communication, 16 March 2009, Damascus.

³⁴⁰ Personal communication with lawyer Hanan, 26 November 2008, Damascus. See also Carlisle 2008 and chapter 5 (§ 5.8.3).

6.5 Collection of proof

When the petition (*'arīḍa*) was accepted by the court, the petitioner would have to bring forth proof establishing his/her claim of nullity. However, it is also the court's task to gather and assess evidence to investigate whether the assertion of nullity is a fact (Pospishil 1991: 501).³⁴¹ First of all, the Damascus court would interrogate both spouses on the facts of the case in a joint session (*jalsat istijwāb*).³⁴² The court questioned them on how they met, about their engagement period, how they got married, about their marital life and, most importantly, what the reasons were for their disagreement (*khilāf*).

In Michelle and Yusuf's case (see above), the questioning of spouses took place shortly after the reconciliation session in court.

Four days later Michelle and Yusuf were back for questioning by the court. Both took an oath on the Bible before the court started with the actual questioning. Michelle (being the petitioner) was the first party to be interrogated. The judge asked her how they met and about their engagement. She answered that they met in church and that they got married after seven months. When the judge asked about the reason for the disagreement between them, she said that Yusuf was very jealous and a trouble-maker. Michelle stated that he hit her, called her names, kicked her out of their house, and asked her father to pay for several household goods, such as a washing machine and a refrigerator. She was afraid of Yusuf and said he always caused trouble; for example, he went to her workplace and created problems there with his jealous behaviour. At this point Michelle indicated to the court that she would like to continue without any outsiders present in the courtroom, therefore a trainee lawyer

³⁴¹ Cann. 1207 ff. on 'proofs'; on 'witnesses and testimonies' (Cann. 1228 ff.); specific or additional regulations on 'proofs' in a marriage nullity case, see Cann. 1364-1367.

³⁴² On one occasion I observed that the interrogation of the spouses did not take place in a joint session in court, this was due to the fact that the husband lived in the United States of America. The husband was questioned by a priest in the USA, the report was subsequently sent to the Catholic court in Damascus, which used this document as evidence in the case.

and myself were asked to leave the courtroom. The session continued for about an hour.³⁴³

Some four weeks later Michelle and Yusuf were back in court and the questioning continued. This time I was allowed to stay present during the questioning. Michelle's main complaint was that Yusuf did not work and that he squandered her own and her father's money. She said that, in retrospect, they married too fast because she had to travel back to France, where she lived at the time. Yusuf joined her in France but never made a serious attempt to settle down there. After a month he went back to Syria. She followed him back to Syria, meaning she had to give up her job in France.

Yusuf, when questioned, said that they did not have a good marriage, partly because of the influence of his father-in-law. Indeed, a month later while being questioned as a witness, Michelle's father acknowledged that he had been against the marriage from the very beginning, fearing that Yusuf was only interested in his daughter's French nationality and her (family's) money, and that he did not want to work. Yusuf, when asked by the court, admitted that the main reason why he married Michelle was because of her French nationality and the fact that she had a job in France. Both spouses declared that there was no hope of reconciliation between them. Although the court continued throughout each session to underline the importance of reconciliation, it appeared in this case to have acknowledged that there was no more hope in saving this marriage (i.e. its validity was rightfully challenged). The judge warned Yusuf not to make the same mistake again, i.e. to get married for the wrong reasons.³⁴⁴

Another example of an interrogation of spouses in a joint session:

³⁴³ Case N, Catholic first-instance court, 16 March 2009, Damascus.

³⁴⁴ Since this case was still in its early stages and my fieldwork ended a month later, I could not follow up on this case (Case T, Catholic first-instance court, 20 April 2009, Damascus).

Samir, a young man in his thirties, filed a case requesting the court to nullify his marriage because his wife, Muna, concealed her illness from him before they got married. In this session both spouses were heard by the court. After both spouses were sworn in, Samir (being the petitioner) was the first being questioned by the court. The court started by asking what his denomination was and if he went to church to pray. The husband answered he was Catholic and that he went to church almost every Sunday. Asked what kind of profession he had, he answered he worked in a restaurant in Lebanon. The judge asked him where he had met Muna and when he proposed to her. Samir answered that he met Muna in her father's shop in the countryside. He asked her to marry after three months, but they were never engaged because they had married secretly. When the judge asked about the reason for the disagreement between them, he said that Muna never stayed home. She always went out and she was sick, she had epilepsy and this influenced her mind. Samir had stated in his petition that Muna lied to him before the marriage because she concealed her disease from him. The judge asked him to elucidate on the allegations before the court. Samir explained that she did not tell him about the disease before the marriage. He only discovered it later on when they travelled to Lebanon and he saw her medications. He then took her to a doctor who told him Muna was epileptic. The judge concluded his questioning by asking if there was still hope for reconciliation, Samir said there was not. Samir's lawyer was allowed to question his client. He asked how many times they met before the marriage; Samir answered they met three or four times, and that Muna's father had objected to the marriage. His lawyer asked if her disease affected her household duties, Samir reacted strongly, saying: "Of course! The illness has an effect on her duties, because she is very slow. If she wants to make *tabbouleh*,³⁴⁵ she needs 3 hours! If I would have known she was sick, I would not have married her." The judge finally asked him where they used to meet before they got married, he said that they used to meet each other in her grandmother's house. The grandmother had only told him indirectly about Muna's illness by telling him to be patient with her.

³⁴⁵ A traditional salad, popular in Syria and Lebanon.

The line of questioning of Muna was more or less the same. The differences in her answers lay in the reason of their disagreement. Muna claimed that Samir did not give her any money, just 1,000 SP (roughly 15 Euro) per month, and that he did not buy her the medication she needed for her illness. She added that he did not provide a good marital house to live in and that he took her gold and sold it. She denied Samir's allegations who claimed she hid her disease from him. Muna stated that her sister and her friends informed him about her disease and that she could support her claim by bringing witnesses to the court. She said that Samir told her before they married that he wanted to marry her even if she was sick, even if she had cancer he still wanted to marry her. Like Samir, Muna saw no possibility for reconciliation.³⁴⁶

In addition to their own statements, the parties are required to deliver evidence to the court to support their claims. The court or parties may seek assistance from a professional expert, a *khabīr*, such as doctors and psychiatrists.³⁴⁷ In the above-mentioned case Muna was examined by two doctors appointed by the court to determine the severity of her illness.³⁴⁸ The petitioner had to cover the costs of a medical expert's opinion (3,000 SP).

The most important source of information for the court, however, was witness statements. The petitioner was required to produce witnesses to support his/her case, the respondent may do the same but was not obliged to do so. The court preferred to hear witnesses who know (and knew) the parties well, particularly during their courtship, betrothal, and the wedding day itself. For instance in above-mentioned case, Samir and Muna had to bring witnesses to the court to prove that Samir was (not) informed about Muna's illness.³⁴⁹

³⁴⁶ Case L, Catholic first-instance court, 23 March 2009, Damascus.

³⁴⁷ See Arts. 440-447, 548 CLPS and Cann. 1255-1262, 1366 CCEO.

³⁴⁸ Unfortunately, I was unable to attend the session in which the doctors presented their medical reports.

³⁴⁹ My fieldwork period had come to an end by the time these witness hearings were scheduled, for that reason I do not know how this case developed over time. However, I got the impression that, based on the way the judges communicated with the wife, they seemed to sympathise with the wife, especially as she could not afford a lawyer and was forced to manage her own legal affairs.

As I mentioned earlier, it is exactly during these witness examinations that the attachment to patriarchal gender norms clearly manifested itself. In the following paragraphs, several cases will be described demonstrating that shared patriarchal norms and views on social propriety and marriage and family, such as obedience of women and upholding the family honour, are greatly appreciated, also in the Catholic courtroom.

6.5.1 Witness statements

In a so-called witness hearing (*jalsat istimā' li-l-shuhūd*), the court tried to get an idea of the seriousness of the disagreement between the spouses, the circumstances leading up to the marriage (i.e. the circumstances and length of courtship and betrothal), the wedding day, marital life itself, and so on. The line of questioning was, by and large, always the same. The hearing focused on the reason of the disagreement (*khilāf*). The witnesses were asked to share their thoughts and opinions on this issue with the court, preferably illustrated by examples. In case the wife was accused of not being a good housewife, the court asked whether she fulfilled her household duties and whether the witness could attest to her negligence (or diligence). For example, did the house look clean when the witness visited the house? Did the wife serve him/her coffee? Besides the more trivial questions, the court also asked more personal/intimate questions regarding the couple's life. For example, why did they not have any children? Was it because he/she did not want them or was there perhaps a physical problem? And if there was a medical problem, whether they had seen a doctor?

Anyone questioned by the court first had to identify him- or herself. A litigant/witness gave his/her ID card to the clerk, who copied the personal particulars into the file. Subsequently, the judge asked the interviewee for his/her name, religion, denomination, profession, and – in case of a witness – his/her relation to the petitioner/respondent, and whether he/she was involved in a lawsuit with one of the litigants. It is interesting to note that the Catholic court always asked the litigants and witnesses to which religious denomination (*tā'ifa*) they belonged and if they went to church to pray, regardless of their religion, i.e. Christians and Muslims (witnesses) alike. I never observed a *shar'iyya* or Greek-

Orthodox judge who took any profound interest in someone's denomination, church attendance or prayer habits, in relation to being a witness.

Anyone being heard by the court was sworn in before testifying by taking an oath on the Bible or the *Qur'ān*, depending on their respective religion.³⁵⁰ No difference was made between litigants or witnesses, they both had to take the oath, unlike the *shar'iyya* courts where only witnesses were required to swear an oath (see chapter 5).³⁵¹ On a few occasions I saw Muslim witnesses taking the stand, usually neighbours, colleagues or friends of either the petitioner or the respondent. However, the majority was Christian, generally family members: fathers, mothers, siblings, grandparents, aunts and uncles, cousins, but also neighbours, colleagues and friends. For instance, in the case of Michelle and Yusuf, Michelle (petitioner) presented five witnesses to support her claim.

The first witness she presented to the court was her father. As mentioned earlier, he said he had been against the marriage from the very beginning, fearing that Yusuf was only interested in his daughter's French nationality and her (family's) money, and that he did not want to work. In addition, he testified that the relationship was good before they got married but as soon as they married Yusuf changed completely. The second witness was a friend of Yusuf, who attested to the court that Yusuf told him he only wanted to marry Michelle because he was interested in travelling and obtaining the French citizenship. The third witness was a friend of Michelle, she also noticed that the relationship between the couple changed as soon as they got married. She told the court Yusuf changed his behaviour shortly after the wedding. According to the witness, it was clear from the beginning that the spouses were socially very different. Witness number four was a young Muslim woman, a friend of Michelle. Her testimony corresponded to the previous three witnesses, she also testified that everything was fine before the wedding and that Yusuf changed afterwards. She said he did not work, that he was lazy and did not do

³⁵⁰ A copy of the Bible was placed on a bookstand on the litigants' table; a copy of the *Qur'ān* lay behind the bookstand.

³⁵¹ The oath was the same as in the *shar'iyya* courts, namely: 'I swear by God, the Almighty, that I will tell the whole truth without adding or omitting anything' (*uqsim bi-llāh al-'azīm an aqūl al-ḥaqq kullahu dūn ziyāda aw nuqṣān*).

anything in the house, instead he slept most of the day. The final witness was a young woman, also a friend of Michelle, who testified she heard that Yusuf had told a friend that he did not love Michelle (even before the wedding) and that he only married her friend because of her French nationality and because she came from a wealthy family.³⁵²

When there were several witnesses taking the stand in the same case, only one witness was allowed in the courtroom, other witnesses had to wait their turn outside.³⁵³ The procedures concerning witness examinations correspond to what we saw in chapter 5, i.e. proceedings in the *shar'iyya* courts. This makes sense as all personal status court follow the same national procedural and evidence law (chapter 2, § 2.4).

According to the CCEO, the spouses cannot be present at the questioning of witnesses, unless the judge allows them to be present (Art. 425 CLPS, Can. 1240 CCEO).³⁵⁴ Nevertheless, sometimes one or both spouses would be present, in addition to their lawyers who were always present. More than that, occasionally the spouses would comment on the witness testimonies, sometimes leading to heated discussions or emotional outbursts, either by the spouses or the witnesses. Like this one time where a husband (petitioner) undermined the statements of the witnesses he presented to the court to support his claim.

The wife (respondent) was accused of having left the house, without her husband's permission, to stay with her family. In addition, he alleged she did not want to have children and had taken precautions to avoid pregnancy. The witnesses were unable to back the husband's allegations with strong evidence. After the witnesses had their say in the matter, the wife got the opportunity to ask them questions. The judge insisted she asked her questions via the judge, not directly to the witnesses.³⁵⁵ She then asked the first witness (related to the husband *and* the wife) whether he knew that her husband hit her. The witness, a middle-aged man in his

³⁵² Case O, Catholic first-instance court, 18 May 2009, Damascus.

³⁵³ Art. 77.1 Law of Evidence. In addition, separate examination of witnesses is also prescribed by the CCEO in Canon 1241.

³⁵⁴ On 'Witnesses and Testimonies' see Arts. 413 ff. CLPS and Cann. 1228 ff. CCEO.

³⁵⁵ Art. 427 CLPS and Can. 1242 CCEO.

fifties, said he did not know. She asked him ‘don’t you remember when we met in the street and my face was bruised and I had a blue eye?’ Again he said he did not remember. Whereupon the husband responded in an irritated tone: ‘Yes, I beat her!’, as if he wanted to get it over and done with.³⁵⁶

6.6 Marital rights and duties

In the various Syrian communities, similar to other Middle Eastern communities, the family and marital structures are generally patriarchal (see chapter 4). As a rule, the husband is the breadwinner and the wife stays at home to take care of the house and children, whether she has a job or not. Patriarchal gender roles, values and expectations of what is right and proper spousal behaviour were constantly expressed, acknowledged and reinforced in the Catholic courts. Furthermore, witnesses presented to court by the litigants often stressed the moral character of the plaintiff/defendant, e.g. is he/she a good man/woman; husband/wife; father/mother, and so on. However, it is important to bear in mind that the witnesses’ – and with that the court’s – assessment of the litigants’ performance as husband or wife was often also strategically guided by their lawyers. They prepared their litigants and witnesses before they were interrogated by the court, making sure their clients came across as a good wife or husband.

In the examination of witnesses, considerable attention was given to the marital roles at stake. An example of a case in which views on what constituted as (im)proper spousal behaviour on account of the wife was evidently expressed in the following witness statements. In this court session three witnesses were presented to the court by the petitioner, i.e. the husband (hereafter called Michel), who was in his late thirties. Michel was married to Sawsan, who was about fifteen years his junior.

The first witness was the mother of Michel, an elderly woman originally from Iraq. The court’s first question (as usual) was what the witness thought the reason for the disagreement between the spouses was. The

³⁵⁶ Case C, Catholic first-instance court, 2 March 2009, Damascus.

witness said the problems started shortly after the marriage, Sawsan did not fulfil her household duties or her marital duties (*wājibāt manziliyya wa wājibāt zawjiyya*) and she always quarrelled in a loud voice, in the presence of the neighbours. The judge asked what the witness meant by marital duties, whether she referred to sexual relations between the spouses. She simply responded by saying that she (Sawsan) was not close to him. As for her household duties, the witness explained that the couple lived with them, i.e. his parents. Therefore she knew for a fact that Sawsan did not cook and that she refused to learn how. The court asked whether the wife had left the house without informing her husband. The witness answered in the affirmative and said Sawsan occasionally left the house at 9 a.m. only to return around midnight. She went on to say: 'Once she left the house and locked the door. When my son returned from work, he could not enter his house. He had to sleep at our [his parents] house. When I asked her why she had done that, she replied 'It is my house!' While he pays everything for her! She just buys many things, we do not know where she gets the money from.' The witness continued by saying that the last time Sawsan left, she went with her father and youngest brother and took all her gold with her. The judge asked where the wife was at the moment, the witness said she was with her family. The judge asked the witness whether she knew if the wife wanted to return to the conjugal home, she replied there had been several reconciliation sessions in church and in court. After the last reconciliation in court, Sawsan called the police³⁵⁷ in the evening and told Michel she wanted to divorce him.

The second witness was an elderly man, the father of Michel. The court asked him for the reason of the disagreement. He answered that the first 20 days of the marriage Sawsan behaved exemplary but then she started to spread bad rumours about Michel and his family. According to the witness, Sawsan had absolutely no respect for her husband. Michel (his son) was a good man, a person with high moral character. She, on the other hand, was the opposite: she was an ill-natured woman. The lawyer of the husband agreed with the witness and added: 'He really is a very kind man, everyone likes Michel!' The judge continued to question the

³⁵⁷ I do not know the reason why Sawsan called the police.

witness and asked if the wife fulfilled her household duties. He answered that she did not, because she did not cook nor clean: 'She does not know how to be a good wife – she serves cold coffee!' The judge asked who did the grocery shopping. The witness said his wife and his daughter usually did it, Sawsan rarely helped around the house. The court pursued the question of abandonment by the wife and asked whether she had left the house of her own accord. The witness replied in an ironic tone: 'Ah! She is a woman of importance!' After which he told the same story as his wife (the first witness), about how Sawsan had left the house, locked it (thereby shutting her husband out of the house) and forcing him to spend the night with his parents. The judge asked about the last time she had left the house; the witness explained how Sawsan left the house with her mother and sisters, taking all of her gold with her. The court asked whether there was a possibility of reconciliation (*muṣālaḥa*). The witness did not think there was much hope because Sawsan always said 'I do not want to return'. She wanted to divorce him; she already started saying this after two-and-half months of marriage. Michel's lawyer asked the witness whether any reconciliation attempts had taken place. He answered that a priest had come to their house with some other people to try and reconcile the couple: 'we have tried *muṣālaḥa* but we failed.' The lawyer asked what else happened on that day, the witness told that in the evening Sawsan came back with the police, they came to collect her belongings. Finally, Sawsan's lawyer asked the witness about their engagement period, the witness explained that Michel's family made inquiries about Sawsan before the wedding among her family members, in particular her mother and siblings. Everything seemed perfectly normal, she changed about ten days after the wedding.

The third witness was a woman in her forties, she was Michel's sister. Broadly speaking she told the same story as her parents. Sawsan did not fulfil her household duties; she did not cook or clean. According to the sister, Sawsan was lazy, when she was at home she watched TV, she refused to help around the house.³⁵⁸

³⁵⁸ This latter witness statement was wrapped up rather quickly, most likely because her statements corresponded with the former two. Case S, Catholic first-instance court, 4 May 2009, Damascus.

When a wife was accused of not fulfilling her marital duties, the witness' questioning usually focused on her role as a housewife. What did the witness see when he/she visited the marital house? Examples of domestic negligence heard in the Damascus court included the following: 'The house was not clean', 'She is always out', 'She does not cook, she buys food from the market', 'She does not serve coffee or tea' or 'She serves cold coffee'. When a husband allegedly failed to fulfil his marital duties, the accusations were usually more serious: 'He beats his wife', 'He expelled her out of the marital home', 'He has a (unlawful) relation with another woman', 'He refuses to financially support her' or 'After she had an operation in hospital, he never inquired after her health and simply ignored her'. This latter statement was given by a witness in a case where the husband (hereafter called Firas) had filed a *buṭlān* case claiming his wife, Miryam, left the house without his permission. In this session the respondent, Miryam, presented her witnesses to the court, five in total; they were all family members, including siblings and her mother. Miryam was present the entire time.

All witnesses stressed that Miryam was an exemplary wife, as opposed to Firas who they all depicted as a bad person who treated his wife badly. They stated that when they visited the couple the house always looked clean, as Miryam kept the house clean, she did the grocery shopping, prepared food, i.e. all what is expected of a wife. It appeared that Miryam had some medical problems and had to go to hospital because she needed surgical treatment for a prolapsed uterus. After the surgery she went to stay with her family and – to make matters worse –

Firas had told Miryam's mother he did not want her daughter as a wife. Miryam stayed with her family for more than a month and not once did he ask how she was. Miryam's sister-in-law testified she met Firas in the *servees* (minibus) after she had returned to the marital home and asked him how Miryam was doing, he said he did not know. The sister-in-law went to see Miryam the same day to help her in the house and Firas just sat there, completely indifferent, doing nothing. Besides, he refused to give her money, money she needed for the household, but also money to pay for her medical expenses. According to one of Miryam's sisters, Firas had

told her (the sister) last time she saw him in court that he was not going to give Miryam any money.

That was why Miryam's lawyer asked the court to impose alimony obligations on Firas during the pendency of the *buṭlān* proceedings, so-called interim maintenance (*nafaqa musta'jala*). A petition for interim maintenance could be decided upon immediately and would become payable from the date the *buṭlān* case was presented to court. Interim maintenance may include: child support, payment of school fees, spousal support, housekeeping allowance, and so on.³⁵⁹ As a matter of fact, both husband and wife can file a petition for *nafaqa* to the court, depending on who is the petitioner, the litigants' financial and other relevant circumstances.³⁶⁰

Miryam's lawyer asked the court to impose an overdue *nafaqa* payment of 20,000 SP to be paid by Firas a week later. Whereupon Firas' lawyer objected, however to no avail, for the court granted Miryam's request. What was remarkable in this case, was that the presiding judge made no secret of his opinion. After the witnesses' statements he said 'This is not normal, he did not visit her after the surgery at her family's house. She is his wife. Three months she stayed with her family and he did not inquire after her – that is just unheard-of! (*mā bisīr!*)'³⁶¹

6.6.1 Spousal maintenance versus obedience of the wife

In chapter 4, I described the regulation of marital rights and duties according to the SLPS and the main Christian laws of personal status. When we look at Catholic canon law, we see that the maintenance-obedience equation is also obviously laid down in the CLPS.

Article 38 of the CLPS states that all Eastern Catholics are subjected to the provisions of the CCEO pertaining to marriage and the dissolution thereof. According to the CCEO, the marriage covenant 'is by its very nature ordered to the

³⁵⁹ Personal communication with Fr. Elias, judge in the Catholic first-instance, Damascus, 12 March 2009.

³⁶⁰ Personal communication with Fr. Elias, judge in the Catholic first-instance, Damascus, 12 March 2009.

³⁶¹ Case A, Catholic first-instance court, 25 May 2009, Damascus.

good of the spouses and to the procreation and education of children.’ (Can. 776) Canon 777 reads ‘[o]ut of marriage arise equal rights and obligations between the spouses regarding what pertains to the partnership of conjugal life.’ But what exactly are these rights and obligations?

The CCEO does not provide a definition of ‘spousal rights and obligations’. According to Pospishil, they are determined by doctrinal writings and canonical jurisprudence (1991: 197). Although the CLPS, similar to the CCEO, does not elaborate on the concept of marital obligations in general, it does pay considerable attention to the issue of maintenance between the spouses (Arts. 121-133). The husband has to provide financially for his wife and family from the time a valid marriage is concluded (Art. 121). The maintenance (*nafaqa*) obligation includes food, clothing, housing and medical care (Arts. 107-108 CLPS). The wife for her part is obliged to cohabit with her husband in the marital house (Art. 125).³⁶² If, however, she leaves the marital house without a valid reason, she is considered disobedient (*nāshiza*) and she consequently loses her right to maintenance (Art. 127). She is also considered disobedient when she prevents her husband from entering her house or when she refuses to move with him to a new house, provided she does so without any valid reason (Art. 127.2). A wife who has been found guilty of marital disobedience or abandonment cannot claim maintenance for as long as the period of abandonment continues (article 128 CLPS). In exceptional cases, a disobedient wife can be ordered to pay maintenance to her husband to compensate for damages she caused by leaving the conjugal house, but only when the wife is well-off (Art. 129 CLPS). Thus, similar to the SLPS and other Christian personal status laws (see chapter 4), the wife’s right to marital maintenance is made conditional upon her behaviour and co-habitation.³⁶³

Likewise, the concept of marital obedience, i.e. obedience of the wife, is found in Muslim and Christian communities and laws alike. Akin to the SLPS, the Catholic law also ‘punishes’ a wife for leaving the marital home of her own accord: for when she leaves the house, she loses her right to *nafaqa* (article 74 SLPS, article 127

³⁶² A wife can, however, not be forced to live with her in-laws or children from a previous marriage (Art. 126 CLPS).

³⁶³ See § 4.6.2 and § 4.9.2.

CLPS). Similar to proceedings at the *shar'iyya* courts (chapter 5, § 5.4), a Catholic husband can go to court to file a claim requiring the wife to return to the marital home, i.e. a claim for marital obedience (*da'wā al-mutāba'a*), see also case study below. When the court receives such a claim, it will have to investigate whether the wife has in fact left the house and what the reasons for the abandonment (*hajr*) are (Moslih 2008: 138 n. 1). Questions that need answering are: Did the wife leave the house on her own initiative or was she ejected from the house by her husband? Was and/or is she willing to return to the house voluntarily? If not, why does she refuse to return to her husband's house?

To determine whether the wife was really disobedient, witness statements (again) were crucial, preferably coming from relatives and others who knew and interacted with the spouses regularly, for example neighbours. An example: On a hot day in June, George presented three witnesses to the court to support his claim that his wife Hind was disobedient. The three witnesses were all male and appeared to be somewhere between the age of 35-45. Besides the litigants' lawyers, Hind was also present. However, she had to step outside the courtroom as soon as the witness examinations began.

The court asked the first witness, a friend of George, to give his account on the reason why the couple was in disagreement with each other. He explained they were often at variance with each other and that Hind had left the conjugal house. The witness said George told him that his wife was disobedient (*nāshiza*). He went on telling a tangled story about Hind being a woman of questionable morals. The judge was visibly annoyed with this garrulous witness; he cut him short and dictated to the clerk: 'There are several reasons for the disagreement between the spouses but I do not know what the main reason is.' The court asked whether the wife left the house of her own accord or whether the husband expelled her from the conjugal house. The witnesses related that Hind left the house and went to the village of Marmarita to stay with her family. The judge asked him who told him this. He explained that he happened to be at their house when Hind phoned her husband to tell him she had gone to her family in Marmarita. Later she returned to the marital home, accompanied by a friend, to collect her belongings and other goods, such as cooking utensils.

The judge inquired whether the wife fulfilled her marital duties (*wājibāt zawjiyya*). The witness started rattling away about Hind and failed to give a direct answer to the court. Again the judge cut him short and asked him: 'He said she does not want children, is that true?' The witness answered by saying he did not know, George did not tell him anything about that. The questioning by the court continued but the answers did not seem to satisfy the court or the lawyers. Occasionally, the lawyers objected to the statements of the witness, leading to counter-objections against each other, much to the anger of the judge: 'I am in charge here, you talk to me, not to each other!'

The second witness, a neighbour and friend of George, was able to give a more satisfying statement. The witness told the court that Hind had no respect for her husband. In answer to the court's question whether she deserted the conjugal house alone or with her husband, he replied that George told him that Hind had left the house alone. The judge asked whether he thought she wanted to continue with the marriage, he answered in the negative: 'No, of course not'. He added that her behaviour as a married woman was generally disrespectful. One evening he saw Hind out on the street with another man. He said that it was inappropriate for a married woman to be seen with another man in public. Furthermore, whenever George and Hind had an argument, she would leave the house, not to go her family but to outsiders. Again, the witness thought this was inappropriate because she should go to her family instead, who would help her to reconcile with her husband. He said he visited the couple only once; however, he saw her often – that is to say – he saw her out on the street. He was therefore not surprised to hear that George managed to obtain a performance claim for marital obedience (*tanfidh al-mutāba'a*). Finally, the judge asked whether – to his knowledge – the wife wanted to have children. The witness said she already had a child from a previous marriage. He thought she did not want to have more children. According to the witness, George tried to reconcile with Hind but she refused.

The third witness was also a neighbour, he lived in the same district (*hāra*). He gave a rather brief testimony, mainly because he either

could not answer the questions of the court or because his knowledge was only based on hearsay.³⁶⁴

In chapter 4, I talked about ‘morality’, ‘propriety’ and ‘family honour and women’s sexuality’ in relation to (in particular) spousal and parental behaviour of litigants. The case described above is a good example of expression of norms and views on (im)proper spousal behaviour: ideas about improper spousal behaviour on account of the wife were clearly expressed by the witnesses, especially by the second witness. His moral assessment of Hind’s conduct was clear: a married woman should not interact with unrelated men in public; when a couple has an argument, they should turn to their families for help in resolving their differences, and so on. Here we see that the assessment of a person’s character and/or behaviour is indeed based on daily interactions (see § 4.2) Hind did not live up to the domestic ideal of a housewife because she deserted her husband and the conjugal house, and she ‘mixed and mingled’ with men in public. As explained earlier, a woman’s sexuality is closely connected to the good name and reputation of her family. As marriage is considered the only place for licit sexual relations, a wife’s sexuality is obviously directly connected to that of her husband. Muslim and Christian women alike are expected to keeping line with social decorum and behave modestly and self-effacingly and not embarrass their husbands and families by mingling with men in public (see § 4.2.1).

6.7 Unconventional marriage practices

One day I witnessed a rather peculiar case, as the husband claimed that he discovered (six months into the marriage) his wife had been married before. But what made the case so peculiar was that he heard his wife had ‘contracted’ a so-called *zawāj ‘urfī masīhī*. Marrying the ‘*urfī*’ way (i.e. informal or traditional) meant – in this case – that the marriage was not celebrated in the church and therefore also not registered at the Church or the Civil Registry. The judges were visibly surprised when they heard the husband’s claims. Their reaction of amazement is understandable since the Church does not recognise such marriages. A valid

³⁶⁴ Case P, Catholic first-instance court, 15 June 2009, Damascus.

Christian marriage has to be publicly celebrated in a church, blessed by a priest (Can. 828, 838 CCEO).³⁶⁵

The phenomenon of *'urfī* marriage was already discussed in the previous chapter in relation to Muslim marriage practices (see § 5.6). What is striking here, is that the phenomenon also seems to occur among Christians, which is unusual because it is contrary to Christian doctrine. A possible explanation is that Christian communities in Syria and Lebanon have become acquainted with Muslim *'urfī* marriage practices, especially in those areas where Christians and Muslims live together, but whether these practices are actually copied by Christians is questionable. However, since the wife in this case was a Lebanese Christian from Shtūra, a city close to the Syrian-Lebanese border in the Beqaa' valley, where the majority of the population is mostly Shi'ite and Christian, her alleged marriage might have been the outcome of interactions between the various religious communities. Whether or not she actually had been married and to whom, remained unclear.

In the session I witnessed, the couple (a young couple who lived in Lebanon) had come to court for a *muṣālaḥa* session. Interestingly, the reconciliation session lasted for about five minutes with lawyers still present in the courtroom; after which the court took a short break and went straight on with the cross-examination of the spouses.

According to the husband, after he pressed his wife for an explanation, she admitted to him that she had concluded a *zawāj 'urfī masīḥī* with a man called Ibrahim. The husband said that after the discovery she left the house and took all her belongings, including her gold, and went to her family. The wife's lawyer asked the husband – with due suspicion – who had told him about this marriage, what was the religion of these individuals? He said he did not know. When questioned by the court, the wife strongly denied all allegations. She swore on the Bible, in the name of God and

³⁶⁵ The CCEO does, however, accept exceptions for exceptional circumstances, e.g. when there is no competent priest available (see Cann. 832 and 834). Besides, the Catholic Church also acknowledges 'secretly celebrated' marriages but, again, only in exceptional circumstances. These 'secret' marriages are 'to be recorded only in the special register that is to be kept in the secret archive of the eparchial curia' (Can. 840).

Jesus that it was not true. Upon which the judge warned her not to use these words lightly because in the end she had to answer to God, not to them (i.e. the court). In her view, his family constantly gossiped about her, from the first day of their marriage they started spreading rumours about her. She said she loved her husband; that he was a good man but that his family was toxic. Despite the fact that she loved him, she also believed that reconciliation was no longer possible.³⁶⁶

During my time in the Catholic court I heard of one other case where a man claimed he married his second wife the *'urfi* way; a marriage he wanted to have annulled. When I asked his lawyer about this case, he told me not to take his client serious. According to him, his client did not know what he was talking about, because being married to two women at the same time is not possible for Christians. Besides, the lawyer added, the husband had filed a *buṭlān* petition, yet now regretted it and wanted his wife back.³⁶⁷

Such alleged wedding practices are, admittedly, probably rare. Unfortunately, I have not had the opportunity to follow-up on this matter. It would be interesting to found out if such informal marriages are in fact contracted (or 'celebrated') among Christians and, more likely, between Christians and Muslims. The examples described above aim to demonstrate that the various communities do not live in a vacuum but that they cross-pollinate with each other. The Muslim and Christian communities are different in many ways but also have a shared historical and cultural heritage, from which the shared patriarchal norms and values (and possibly practices) emerge.

6.8 Conclusion

The peculiarities of each (religious) group, each with their own personal status law and court, is what makes the Syrian plural legal landscape so fascinating. This chapter was aimed at revealing some of the particularities of a Catholic court in Damascus. Due to their strong relationship with Rome, the Catholic courts are quite distinctive, when compared to the other personal status courts. In the first

³⁶⁶ Case J, Catholic first-instance court, 11 May 2009, Damascus.

³⁶⁷ Personal communication, 8 June 2009, Damascus.

part of this chapter, I have sought to demonstrate that it is exactly this alliance to Rome what distinguishes the Catholic court from the other courts.

The Syrian Catholic personal status law is predominantly based on Oriental canon law issued by Rome. The Catholic view on marriage is and divorce is different from other (also Christian) laws. The Catholic Church does not accept divorce because it considers marriage a sacrament, which cannot be dissolved by men. A marriage can be annulled but only when it is proven that it was null or invalid from the very beginning. Furthermore, the Catholic judges of Damascus are trained in this canon law at Pontifical colleges in Rome. Catholic priests who want to work as a clerical judge are required to go through an intensive three-years training in (Eastern) canon law and the extensive regular procedures that need to be followed at any ecclesiastical trial. I have argued that because of their canonical training in Rome, the judges of the Catholic court of Damascus took a much more weighty and formal stand in their handling of annulment petitions than their colleagues of the other personal status courts. In my view, the court proceedings I observed in Damascus were affected by both the canonical legislation and educational background of the judges.

The Catholic courts may be different from their Christian and Muslim counterparts in some regards, they also share some key similarities with other personal status courts, namely the prevalence of patriarchal family norms and values. This chapter has demonstrated that views on traditional marital roles, marital rights and duties were repeatedly emphasised and reinforced by the different actors appearing in the legal arena. My argument that patriarchal views and norms of social propriety, marriage and family were continuously emphasised and reinforced in the personal status courts became especially apparent in the marriage nullification (*buṭlān*) proceedings. During these proceedings in the Catholic courts of Damascus the marital roles in question were thoroughly examined, relying on (in particular) oral statements from the litigants themselves but also witnesses. It was during witness examinations in particular where patriarchal norms and views on marital life came to the fore.