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ACCORD – Austrian Centre for Country of Origin & Asylum Research and Documentation

Query response on Iraq: Suleimania: Is religious marriage legal; consequences of religious marriage (e.g. living together) [a-11461-1]

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Please read in full all documents referred to.

Non-English language information is summarised in English. Original language quotations are provided for reference in the document or upon request.

Legality of a religious marriage in Iraq

The Danish National ID Centre (NIDC), an independent administrative body under the Ministry of Immigration and Integration, which advises and assists Danish authorities regarding questions of identity determination and ID control of foreign nationals, in July 2019 published a note on marriage registration and the issuance of marriage certificates in Iraq. It cites a Landinfo report on Muslim marriage and divorce in Iraq from September 2014 (original language: Norwegian), which states that only a civil marriage holds legal validity in Iraq:

“Both religious and civil wedding ceremonies take place in Iraq, and in many cases a couple will have celebrated their marriage in both ways. Only the civil marriage holds legal validity in the country though, which makes distinguishing between the two important.” (NIDC, 1 July 2019, p. 2)

“In order for a marriage to be legally valid in Iraq, the marriage must be entered and registered in the personal status court in Iraq. According to the Personal Status Law, it is the marriage contract between the two parties that is registered in the Family Court.” (NIDC, 1 July 2019, p. 3)

The Norwegian Country of Origin Information Centre Landinfo, an independent body within the Norwegian immigration authorities, which provides COI services to various actors within the immigration authorities in May 2014 published a query response on when a marriage is considered valid in Iraq. It is explained that according to Islamic law, a marriage is considered valid after the contract has been entered into, and it has been made public, i.e. announced among those close to the couple. One way of announcing a marriage is to hold a wedding party. However, not everyone does. It must then be announced in another way.

Regardless of what is considered sufficient to be married under traditional Islamic law, a marriage must be registered in the family court to be considered legally valid (legally binding) in Iraq. (Landinfo, 28 May 2014, p. 2)

Number of unregistered marriages in Iraq

The UN Committee on the Elimination of Discrimination Against Women, CEDAW, notes in November 2019 as part of its concluding observations on the seventh periodic report of Iraq the increase of unregistered marriages:

“The Committee [...] notes with concern [...] the increased number of unregistered marriages and their negative impact on the rights of women, in particular their economic, social and cultural rights.” (CEDAW, 12 November 2019, p. 12)

Al Arab (The Arab Weekly, AW), a weekly newspaper published in the UK, USA and the United Arab Emirates explains in an article on unregistered marriages from October 2015 the growing trend of unregistered marriages in Iraq since 2003. They cite a lawyer and a legal expert speaking of thousands of lawsuits filed by women to ratify their marriages:

“The trend of unregistered marriages in Iraq has been growing since 2003, following the US invasion that toppled Saddam Hussein’s secular Ba’ath regime and the rise of Islamic parties that gave Muslim clerics power to override existing social status laws.

Many Iraqi marriages are being conducted by clerics and considered as legal in religious settings and at the community level, though the unions are neither registered nor recognised by civil law. [...]

‘Underage marriages and taking a second wife, which are concluded by clerics, constitute the largest number of unions that are not recorded in civil status courts,’ Hosni [lawyer Alia Hosni] said, noting that thousands of lawsuits have been filed by women seeking ratification of their marriages. [...]

Legal expert Wassan al-Otabi said: ‘Some 4,000 lawsuits [over the unions] have been filed only in October, at one court in Atfiya.’

‘The civil status law deems marriages outside civil courts as a punishable crime, sanctioned by six months in prison for men and no less than three years imprisonment for those who contract a second unlawful marriage.’ [...]

Shia cleric Sheikh Jawad al-Khalisi argued that many fail to register the marriages because they only recognise the legitimacy of sharia rather than the civil law. [...]

‘Legal clinics providing free consultations and counselling have been established in all districts. We have succeeded in registering 885 unions out of 1,987 filed by women and 491 cases out of 1,152 filed by men so far,’ noted Haidar Majid, a government official.“ (AW, 30 October 2015)

Minority Rights Group International (MRG), an international human rights organisation working to promote the rights of ethnic, national, religious and linguistic minorities and indigenous peoples, as part of their report on The Lost Women of Iraq from November 2015, cites a study of the Legal Clinic Network of the same year, which found that nearly 34 per cent of 4,265 marriages investigated across nine regions of Iraq were conducted outside the court system. According to experts, the percentage rises to 80 in some areas of Baghdad and a quarter of marriages in Babylon province are conducted outside the court system. With regards to the Kurdistan Region, the report notes that according to one researcher, underage marriages represented up to 41 per cent of total marriage contracts concluded in Kurdistan in 2011, and most of those marriages took place outside the courts:

“Forced marriage and early marriage are both illegal in Iraq. The Iraqi Personal Status Code sets the minimum age for marriage at 18, and only permits marriage for those aged 15–18 with judicial permission based on the fulfilment of certain conditions. Forced marriage is also prohibited by the Personal Status Code and subject to a sentence of up to three years in prison. However, forced marriages and early marriages take place at alarmingly high rates because they are performed by clerics outside the jurisdiction of the courts. Therefore, girls who find themselves in such marriages are not only forced to bear heavy emotional and physical consequences, but also the legal disadvantages which result from unregistered marriages.

A 2015 study which investigated 4,265 marriage cases in Iraq across the governorates of Baghdad, Basra, Dhi Qar, Muthanna, Missan, Babel, Anbar, Diyala and Ninewa found that more than a third (33.9 per cent) were conducted outside the court system. Of those marriages, 22 per cent involved girls under the age of 14. According to the Baghdad Women’s Association, in some areas of Baghdad 80 per cent of marriages are conducted outside the court system. [...]

The phenomenon of early marriage is most pronounced in the poorer governorates of south and central Iraq. In Babylon, a quarter of marriages are concluded outside the court system and 6.8 per cent of girls are married before the age of 15.“ (MRG, 4 November 2015, p. 23)

“Despite the new economic prosperity of the Kurdistan region, forced and early marriages continue to take place in large numbers, especially in rural areas. [...]

According to one researcher, underage marriages represented up to 41 per cent of total marriage contracts concluded in Kurdistan in 2011, and most of those marriages took place outside the courts.“ (MRG, 4 November 2015, p. 25)

Consequences of a religious marriage in Iraq, e.g. living together

Please note that only little recent information could be found regarding this topic.

Landinfo explains in a September 2014 report on Muslim marriage and divorce in Iraq that couples sometimes only register their marriage when their children reach school age:

“A private marriage ceremony is not essential, but many couples choose to arrange one. From a religious perspective, such a ceremony is sufficient to be considered legally married, and some postpone the registration of the marriage until their children reach school age.“ (Landinfo, 12 September 2014, p. 3)

The report reiterates that a privately conducted marriage is often sufficient for the couple to be considered married in

the local community. (Landinfo, 12 September 2014, p. 9)

The Danish National ID Centre confirms in its note that considerable time might pass between the holding of a religious ceremony and the legal registration of a marriage, with the couple having children in the meantime:

“As mentioned above, the religious marriage does not hold legal validity in Iraq. However, some sources point to a greater personal value of this religious ceremony resulting in the fact that many choose to have a private religious ceremony as well as a civil.

The more religious the area, the more likely it is that a couple will only celebrate a religious marriage at first. It is, for instance, likely in Najaf and Kerbala, that the civil marriage is celebrated later than the religious. By the time their children enroll in school, the couple will have to celebrate a civil marriage.” (NIDC, 1 July 2019, pp. 2-3)

A United States Agency for International Development (USAID) March 2014 publication gives a detailed account of the reality of unregistered marriages in Iraq with information received through interviews conducted in 2013, emphasising society’s approval of such relationships and their common existence. The report describes traditional religious marriages as having the same characteristics as legally registered marriages, such as longevity, commitment and children:

“Unregistered marriage

These are any marriages that are not legally registered in the Personal Status Court or Personal Items Court. Although a religious or tribal authority may have conducted and witnessed these, they have not been registered in the court and are not recognized by the state. These are, however, common in Iraq and socially approved. For instance, marriages adhering to Sharia are considered religiously legitimate, and are accepted by society. But if such marriages are not registered in court they do not provide the married couple with formal registration documents that prove their union and protect their civil rights.

Unregistered marriages can further be separated in three main categories. These are traditional/religious, polygamous and so-called ‘pleasure’ marriages.

Traditional religious marriage

Traditional religious marriages have the same characteristics as legally registered marriages (e.g. longevity, commitment, children), however the couples’ marriage has not been registered in the court before a judge. In this case, the religious agent or Sheikh conducts a marriage ceremony. Theoretically, the person who officiates a marriage ceremony is responsible for verifying the legal conditions of marriage and recording marriage details. However, in practice this does not often happen.

In practice, anyone who can recite the wedding vows can marry a couple, and under dominating interpretations of Sharia, this is an entirely proper marriage. However, the couple has not registered the marriage as required by the law. In such cases, the husband is liable to be fined or imprisoned for failing to register his marriage. This type of marriage has the same social, cultural and religious responsibilities as formally registered marriage, but is not protected by the state and therefore provides no legal protection or rights. The most salient negative concerns with this type of marriage are protection of rights for woman and children, who are ineligible to have official identity documents to confirm their entitlements to healthcare and education, and protection in case of the death of or abandonment by a spouse or father.” (USAID, March 2014, pp. 19-20)

“The most common form of unregistered marriage is a traditional religious marriage that has not also been registered in the court as required by law. According to the Program’s partner Fatima House Charity for Women, up to half of marriage registration cases in Sadr City (Baghdad) courts involve existing marriages that were not originally registered. This suggests that there are a corresponding number of births that are not registered. In some rural areas, approximately 60% of marriages are unregistered.” (USAID, March 2014, p. 21)

“Most couples with unregistered marriages have been married before a religious or tribal representative. These marriages are considered religiously and socially legitimate and not out of the ordinary.” (USAID, March 2014, p. 22)

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