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JORDAN

Overview

In Jordan the sources of legislation are the Constitution, Islamic Sharia and customary law. Section 2(2) of the Jordanian Civil Code No.43 of 1976 establishes recourse to the principles of Islamic Law, in addition to other sources, in the absence of statutory provisions and Article 2 of the 1959 Constitution declares that Islam is the State religion. The Constitution establishes separate religious and civil courts and Article 105 of the Constitution declares that the Sharia Courts have jurisdiction in personal status and blood money matters. Articles 108-9 establish Non-Muslim Tribunals.

The dominant school of Islamic jurisprudence (*fiqh*) in Jordan is Hanafi and there is a Muslim majority and a Christian minority. Islamic Law is applied to Muslims in matters of personal status and is also applied to Christians in matters of inheritance. The personal status cases of Christians are heard in Ecclesiastical Tribunals.

Foreign Orders

Foreign orders are not enforced if they contradict the Sharia in matters related to personal status issues.

Court Structure

Jordanian courts are divided into Regular (*nizamiya*) Courts, Religious Courts and Special Courts. The Regular or Civil Courts, which are based on the French structure, are divided into four levels. The first level is the Magistrates' Court, which hears lesser civil and criminal matters. The

second level is the Court of First Instance. There are seven of these courts and they are divided into chambers for civil matters, criminal felonies and misdemeanours. These courts also hear appeals from the Magistrates' Courts. The third level is the Appeal Court, which is divided into chambers. Three judges hear appeals from the Court of First Instance. There is also a Sharia Court of Appeals for appeals from Religious Courts. At the highest level is the Court of Cassation. Seven judges hear cases at this court.

The Religious Courts are divided into Sharia Courts, which apply Sharia as established in the Constitution and the Religious Tribunals, which apply the canon law of Christian denominations. The Religious Courts have jurisdiction over personal status and inheritance matters. However, the personal status of foreign nationals comes under the jurisdiction of the Regular Courts. In cases of blood money where the parties are of mixed religion, the non-Muslim may agree to the jurisdiction of the Sharia court. Where there is no agreement the matter is heard by a special tribunal appointed by the Court of Cassation. These tribunals deal with cases where there is a dispute between the jurisdiction of two religious courts or between a religious and a civil court.

One of the Special Courts is the State Security Court, which has jurisdiction over drugs crimes and crimes against the State. The second is the Supreme Council, which interprets law and has the power to try MPs. Finally, the High Tribunal has the power to interpret the Constitution.

Filiation

A child born outside of wedlock must be registered by one or both parents and is given into the care of that one or both. Illegitimacy does not affect the rights of the child, as long as the father puts the child in the Family Book and registers his name on the birth certificate. A child is legitimate if born at least six months after the conclusion of a marriage, whether valid or irregular, and no more than one year the absence or death of the husband or the date of divorce as stated in Article 148 of the Personal Status Code of 1976.

Adoption is not permitted as it contradicts Islamic Law, however *kafala*, which is the Islamic equivalent to adoption, is allowed.

Custody

The Jordanian Law of Personal Status was promulgated in 1976. A new provisional law was introduced in 2001 during parliamentary recess but it was rejected in June 2003 by a new parliament. The provisional law was returned to parliament with minor amendments for consideration and a vote in June 2004 but was rejected. The draft law is again with the Senate. The following is a description of the provisions contained in the 1976 law.

In the event of divorce the mother normally has the most right to custody of the minor child. Article 155 of the Personal Status Code states that the custodian must be adult, sane, trustworthy and able to raise the child. She must not be an apostate, remarried to someone who is not a *mahram* of the child or live in a place where the child is unwanted. Although custody is lost if a Muslim custodian converts from Islam, there is no prohibition against a woman being a custodian if she was born into a religion other than Islam. Leaving the child unattended can also result in the right of custody being lost. However, it should be noted that there have been several judgements issued by the Sharia Court of Appeal that hold that a woman may retain custody even if she leaves her ward to go out to work, as long as she provides suitable alternative care. In some circumstances the father may take custody if it can be shown that the mother does not meet the necessary criteria. These decisions are usually taken by the court on the basis of the child's welfare, which is judged by religious standards.

If the mother is unable to fulfil the duty of custodianship the right passes along the female line according to traditional Hanafi rules. The period of the mother's custody ends when the child reaches puberty if she has devoted herself to the raising of her children (Article 162). If the custodian is not the mother then custody ends at nine for a male child and eleven for a female.

Guardianship

The father has the automatic right to be the guardian of his child. If the father is unable to perform this duty then the right falls upon the father's appointed guardian, then the paternal grandfather, then the guardian appointed by paternal grandfather and then to the court.

According to Article 43(2) of the Civil Code the age of majority is eighteen solar years.

Access

Article 163 of the Personal Status Code guarantees the non-custodial parent contact at least once a week and once a month for the grandparents. Custody cannot be exercised abroad except with the agreement of the father. The court can specify the time and place for contact if an agreement cannot be made by the parents.

Non-Muslim Family Law

The Religious Tribunals hear the family matters of Jordanian Christians. Canon Law is applied according to the denomination of those involved. Custody of Jordanian Christian children is generally awarded to the mother until the child is eighteen.

Nationality

According to Article 9 of the Nationality Law No.6 of 1954 a Jordanian father passes on his nationality to his child, even if he or she is born outside Jordan. A Jordanian woman married to a foreign man cannot pass on her nationality, unless the father is of unknown nationality or has no legal relationship to the child.

Leaving the Jurisdiction

Law 5 of 2003 amended the Passport Law enabling women to obtain a passport without permission. However, a man may place a “hold” with Jordanian Immigration Officials on his wife and/or child to prevent them from leaving the country.

Article 166 of the Personal Status Code states that the custodian may not travel abroad with the child without the agreement of the guardian.

International Law

Jordan ratified the UN Convention on the Rights of the Child in 1991 with reservations against articles 14, 20 and 21.

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