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SYRIA

Overview

The modern Syrian legal system has been influenced by French civil law, Egyptian law and Islamic law. Syria has a majority Muslim population and the dominant school of Islamic jurisprudence is Hanafi. There are Muslim minority communities including the Jaafaris, Druze, Ismailis and Alawis. There are several Christian denominations and a small Jewish community. Article 3(2) of the 1973 Constitution reads that Islamic jurisprudence is a main source of legislation.

The Syrian Law of Personal Status (SLPS) was established in 1953 replacing the Ottoman Law of Personal Status. Article 305 of the Syrian Law establishes Hanafi jurisprudence as a residuary source of law. The SLPS was amended by Law 34 of 1975.

Foreign Orders

Foreign orders can be applied in civil and commercial matters with the approval of the Court of First Instance in the Governorate where the judgement is to be executed. If there is a mutual recognition agreement the Syrian courts will examine only whether the foreign judgement would violate public policy. If there is no mutual recognition agreement the entire case will be re-examined.

Court Structure

The Syrian court structure is based on a dual system of secular and religious courts. The secular courts are further divided into civil and criminal branches. At the lowest level are the Courts of Peace or Courts of Reconciliation (*sulhiya*). These courts hear minor civil and criminal matters

and cases are presided over by a single judge. At the next level are the Courts of First Instance. These courts are divided into civil and criminal chambers and a further court called the Court of Assize hears criminal matters if the punishment for a particular case may exceed three years imprisonment. At the next level are the Appeal Courts. There are thirty Appeal Courts; three criminal and four civil courts in Damascus and one civil and one criminal court in each district. These courts hear appeals from the Peace Courts, Courts of First Instance and Assize Courts. The decisions of the Appeal Courts cannot be appealed but can be nullified by the Court of Cassation. The Court of Cassation, which is divided between chambers for criminal, canonical, civil and military matters, is located in Damascus. Three judges hear cases brought to this court.

Personal status matters are heard by separate courts. The family matters of Muslims are heard by the Sharia Courts. There are three of these courts in Damascus, three in Aleppo and one in each of the other districts. The Druze sect in Syria have their own court called the Doctrinal (*mathhabi*) Court. Family matters concerning non-Muslims are heard by the Spiritual (*ruhi*) Courts. Final appeals from all the religious courts come under the jurisdiction of the Canonical Division of the Court of Cassation.

The Supreme Constitutional Court has the authority to interpret the Constitution and the Administrative Courts have jurisdiction over cases involving the State and its agencies. There is also a Court of Juvenile Offenders, Military Courts, a Court of Customs and a Court of Labour Conflict.

Filiation

The minimum period recognized for pregnancy is six months and the maximum is one solar year. Therefore a child is legitimate if born within marriage if the birth takes place at least six months after the conclusion of the marriage. If this condition is fulfilled and unless it is proved that the spouses did not engage in sexual relations, the child is the legitimate child of the husband, unless the he swears an oath of condemnation (*li'an*). The paternity of a child born fulfilling these conditions within an irregular marriage is also established. A child born more than one year after the death of the husband or from the date of divorce is not established as the child of the husband, unless the he declares the child to be his.

A man who declares a child to be his will establish filiation with that child unless it is proved that he is not the father. If an unmarried couple engage in sexual relations then paternity is established if the child is born at least six months and a maximum of 1 year afterwards.

Custody

Article 139 of the SLPS establishes that the mother has the primary right to custody of young children. This right is passed down the female line in the following order: mother, maternal grandmother, paternal grandmother, full sister, uterine sister, consanguine sister, daughter of a full sister, daughter of a uterine sister, daughter of an agnatic sister, maternal aunt, paternal aunt, then male relations in the order of inheritance. If there is more than one person who is eligible for the right to custodianship then the court will decide who should be awarded custody, according to the best interests of the child. If the father, or other person responsible for paying maintenance to the custodian for the child, is unable to pay and one of the child's relatives offers to take the child, then the custodian must choose whether to continue to exercise custody without compensation or to give custody of the child to the relative.

The period of the custody of a child lasts until a male child is 9 and a female child is 11. Article 147 states that if the guardian is not the father then the judge may extend the period of the mother's custody until a female marries attains majority or male children reach the age of majority. If the guardian is proved to be untrustworthy, even if he is the father, the court can order that the physical care of the children be given to the next in line to be the guardian at the end of the custody period.

All custodians must be sane, adult and able to care for the child. A female custodian will lose the right to custody if she remarries to someone outside the prohibited degree of relationship to the child. She will not lose custody for reasons of going out to work as long as the child has adequate care during her absence. Article 141 declares that custody can be reinstated if the obstacle causing the loss of custody is removed.

Guardianship

Article 170 of the SLPS establishes that the father, followed by the paternal grandfather, has the primary right to be the guardian of the money and person of a minor child. This gives the guardian authority to manage a child's money and also the authority to direct a child's moral upbringing, education, healthcare, career and marriage.

Guardianship ends when a child reaches the age of majority at 18. Article 170(4) states that the guardian will lose this authority if he takes the child out of compulsory education. This condition is also applicable to the custodian. If a guardian is imprisoned he will lose guardianship and the court has the power to appoint a special guardian if necessary. If both the father and the paternal grandfather lose guardianship, the father can appoint a guardian called a *Wasi*.

Access

Article 148(5) of the Personal Status Code establishes the right of both parents to have access to the child. This access should take place regularly at the place where the custody of the child is exercised. In the event of any dispute over access rights a judge can rule that access be re-established immediately. If one of the parents does not comply with this they can be prosecuted and punished according to Article 482 of the Penal Code.

Article 148(1) of the SLPS reads that during marriage a mother cannot travel with her child without permission from the father. If the mother is the custodian she can travel with her child without the permission of the father after the end of the *'idda* (the waiting period required after the end of a marriage), but only to the place where the marriage took place. If the custodian is not the mother she has no right to travel with the child without the permission of the guardian. Article 150 states that the father cannot travel with the child during the period of custody without the permission of the custodian.

Non-Muslim Family Law

Article 308 of the SLPS states that this law applies to all Syrians regardless of religion or denomination in matters of guardianship, whereas the religious law of each community is applied in engagement, custody, dowry, marriage

and maintenance. Therefore, the law applied to non-Muslims depends on religion and denominational affiliation.

Syrian Orthodox

The mother has the primary right to custody of the children, unless she was at fault for the breakdown of the marriage or if the father dies and the mother is not of the orthodox faith and is unable to ensure the child's beliefs. The period of custody lasts until the male child is seven and the female child is nine. If the mother is unable to exercise custody then the father is the custodian, unless he was at fault for the divorce or if he is of bad character. If both parents were at fault for the divorce then the weaning of the child is the responsibility of the mother and the maintenance and upbringing is the responsibility of the father. If both parents are absent then custody is awarded to the person who is acting as guardian. Either of the parents may lose custody if they remarry. They must also be of sound mind and concerned for the welfare, religion and manners of the child. The court has the power to appoint the person believed to be the most appropriate to ensure the child's best interests.

Armenian Orthodox

Custody is awarded to the party not at fault for the divorce, unless the court decides otherwise in the best interests of the child. The court also has the authority to award custody to a relative, a non-relative or a charitable foundation. The decision of the court can be reviewed if there is any change in circumstances. Filiation is established according to the SLPS and if the child is illegitimate then the mother has sole responsibility for the child. The period of custody is seven for a male child and nine for a female child. This can be extended by the court.

Catholic

The personal status of Catholics is subject to the SLPS.

Syrian Evangelical Christians

The mother has the primary right to custody of her children, as long as she does not remarry, is able to ensure the appropriate upbringing and is of good moral character. If the mother does not fulfil one of these conditions then

custody is passed to the father, then the paternal grandmother, the closest relatives of the father and then the closest relatives of the mother. The period of custody lasts until the child reaches the age of seven. If the child is illegitimate then the mother has sole responsibility for the child.

Greek Orthodox

The period of custody lasts until the male child is seven and the female child is nine. Custody is awarded to the party who was not the cause of the divorce. If the mother is awarded custody she will lose it upon remarriage and custody will be awarded to the father, unless the court decides that the children need to be looked after by the mother.

Jewish Law

The period of custody is until the age of six for a male child and until marriage for a female. If the mother cannot fulfil the duties of custodian then the right is awarded to the father. If the mother is the custodian she will not lose this right if she remarries, but she cannot remove the child from the father's country. If a male child wishes to remain with the mother after the end of the custody period he cannot be forced to live with his father. If a female child wishes to live with her father instead of the mother or, if the father is deceased, with her brothers, she must not be prevented.

Nationality

Syrian nationality is automatically passed on from father to child.

Leaving the Jurisdiction

An exit visa is needed when leaving Syria and the permission of the guardian is generally needed to obtain this visa for a Syrian child.

International Law

Syria signed the UN Convention on the Rights of the Child in 1990 and ratified it in 1993 with a general reservation and reservations against articles 2, 14 and 21.

Child Abduction

According to Article 478 of the Syrian Penal Code the abduction of child under the age of 7 is punishable by a prison term of 3 months to 3 years. Article 481 states that the abduction of a child under the age of 18 away from the guardian, even if the child gives consent, is punishable by a prison term of 6 months to three years and a fine of 100 Syrian Lire.

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