

Islamic divorces in Europe : bridging the gap between European and Islamic legal orders

Citation for published version (APA):

Kruiniger, P. (2014). *Islamic divorces in Europe : bridging the gap between European and Islamic legal orders*. [Doctoral Thesis, Maastricht University]. Boom Juridisch. <https://doi.org/10.26481/dis.20141217pk>

Document status and date:

Published: 01/01/2014

DOI:

[10.26481/dis.20141217pk](https://doi.org/10.26481/dis.20141217pk)

Document Version:

Publisher's PDF, also known as Version of record

Please check the document version of this publication:

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STELLINGEN

Behorende bij het proefschrift *Islamic Divorces in Europe: Bridging the Gap between European and Islamic Legal Orders* van Pauline Kruiniger

1. Just as *the* Islamic law does not exist, *the* repudiation does not exist either.
2. There is no unbridgeable incompatibility between Islamic and Western principles regarding divorce if the legal system and practice of a Muslim-majority country provides either spouse the opportunity to obtain a divorce, while at the same time guaranteeing the access to divorce and the procedural position of the other spouse.
3. Any recognition policy regarding repudiation-based divorces should be characterized by a functional and open approach meaning their assessment *in concreto*, while at the same time balancing respect for the 'otherness' of the foreign law at stake and the fundamental principles of gender equality at divorce.
4. Because of the presumed violation of the right of equal access to divorce and of procedural rights of the wife, the abstract assessment of repudiation-based divorces paradoxically results in a violation of fundamental rights such as the right to marry or to family life of the concrete persons involved.
5. Calling Principles a *soft* law instrument is a *contradictio in terminis* because of their *strong* persuasive power.
6. Recognition policies of European (Member) States on third-state divorces – including repudiation-based divorces – should preferably be 'harmonized' by means of an EU Regulation.
7. The principle of mutual recognition not only serves to guarantee the important aim of private international law of providing for a fair and efficient solution in order to meet the legitimate expectations of the parties by continuity of personal status, but also to guarantee an important aim of EU law, i.e. to further the free movement of persons.
8. Private international law (PIL) as Law of Tolerance should be intolerant of any instrumental use for other than PIL purposes.

9. Although euthanasia and assisted suicide are prohibited in Islam(ic law), debates on and regulation of euthanasia in the Netherlands may explain the use of these modes of termination of life by Muslims in the Netherlands.¹
10. The implementation of the findings and conclusions of this thesis will improve the legal systems of the EU and its Member States.
11. Firmly walking the dog three times a day, keeps the doctor away.

¹ Pauline Kruiniger, 'Euthanasie, ook voor moslims?', in: P. Kruiniger (ed.), *Recht van de Islam 26; medische wetenschap, islam en recht*, Den-Haag: Boom Juridische Uitgevers, 2012 p. 53-68.