

In What Sense is Islamic Religious Law Legally Recognised in Denmark?

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Abstract

Following recent scholarly discussions on what kinds of religious law are accepted and recognised by state and the secular legal order, this article examines and discusses if and how sharia – understood as Islamic law, ethics and practice – may be considered legally recognised in Denmark. The question has both scholarly, legal and political implications, as well as a long history. The Danish context of recognition of religious communities is introduced, with some historical remarks, but this article takes a practical and empirical point of view in recent Danish legislation of recognition of religious communities and examines the specific articles of association and supporting documents that form the basis of legal recognition. The article introduces a short conceptual and theoretical discussion of what legal recognition implies and how to understand legal recognition as the mutual establishment of legal facts. The article tests the question of legal recognition looking at empirical case evidence, key aspects and analysis of Islamic religious law in 25 recognised Islamic religious communities in Denmark. Legal recognition has important but limited implication, which should not be overstated, but the article does conclude that sharia is recognised as part of the material basis of the recognition regime in Denmark.

Introduction: The problem and its context

In his recent book, *Comparative Religious Law – Judaism, Christianity, Islam*, prof. Norman Doe critically tests a number of public, political and legal assumptions about the role and place of religious law in Britain (Doe 2018). The book surveys the primary and secondary religious law of Christians, Jews and Muslims, that is, first, the traditional, historical or classical sources of religious law and, secondly, the modern regulatory and legal instruments of Christian, Jewish, and Muslim religious

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organisations, in their constitutions, articles of association or other foundational legal documents (Doe 2018, 3). The book also sets out to examine how and to what extent religious organisations in these documents address the applicability of civil law to their faithful. Most interestingly, the book seeks to assess which elements of “religious law are recognised expressly or tacitly by the civil law of the State and its institutions” (Doe 2018, 3). Norman Doe is well aware that this has the potential for – and is actively encouraging – political debate and increased awareness about the actual state of affairs of religious law. This is perhaps most significant in the potential for understanding the extent and reach of recognition of sharia – Islamic religious law, ethics and practice – that are implicit or explicit in the constitutional documents of the recognised communities.

Norman Doe’s conclusions are ten-fold and extensive (Doe 2018, 388-398). The first three, however, seems most relevant for the controversy regarding Islamic religious law. He firstly concludes that “religious law exists as legal fact in society today, [and is used] in a wide range of areas in the lives of the faithful” (Ibid., 388). Secondly, misgivings about a lack of obedience to state law or jurisdictional controversies are refuted as he concludes that “all three faiths have a *general* jurisprudence on the submission of the faithful to law of the state,” (Ibid., 389) and that “Muslim organisations incorporate, or defer expressly to, elements of civil law” (Ibid., 389). Thirdly, the place of religious law in society is clearly understood as based on reciprocity, as to “elements of religious law, and/or decisions of religious authorities are recognised either expressly or tacitly by the civil law of the State and its institutions.” (Ibid., 389).²

Although Doe’s *Comparative Religious Law – Judaism, Christianity, Islam* is centrally concerned with recognition, it does not touch much upon the conceptual understanding of legal recognition but Norman Doe has done so earlier, where he discusses the different modes of recognition across Europe.” Behold fodnoten.³ Looking to a Danish context, the circumstances regarding legal recognition for religious

2 This question echoes, and Doe also references the controversy, the lecture by Rowan Williams, “Civil and Religious Law in England: A Religious Perspective,” where Williams points to “the presence of communities that, while no less ‘law-abiding’ than the rest of the population, relate to something other than the British legal system alone. Cf., Williams, Rowan, “Civil and Religious Law in England: A Religious Perspective,” *Ecclesiastical Law Journal*, Volume 10, Issue 03, September 2008, pp. 262-282

3 Cf., Doe, Norman, “Chapter 5: The Legal Position of Religious Organisations” in: Doe, Norman, *Law and Religion in Europe: A Comparative Introduction*, Oxford: Oxford University Press 2011, pp. 96-97.

communities have been changed from 1 January 2018, and considering Norman Doe's questions and conclusions, this is an excellent occasion for a renewed study of recognition of Islamic religious communities in Denmark. Thus, the research questions to be examined in this article are: What is the material substance of legal recognition of religious communities in Denmark, in specific, of Islamic communities? Is it theoretically and empirically possible to trace Norman Doe's steps and see if his three initial conclusions also apply in Denmark? And what does the empirical basis of recognition of Islamic religious communities in Denmark say about the relation between the Danish state and the Islamic communities?

This article opens with a short conceptual and theoretical discussion of what legal recognition implies and how to understand legal recognition, specifically, as opposed to trends in political philosophy that focuses on 'politics of recognition.'⁴

At greater length, the Danish context of recognition of religious communities is introduced, with some historical remarks, but returning to the recent legislative changes in Denmark, in particular, the 2017 *Act on Religious Communities outside the Church of Denmark* and the 2018 *Executive Order on the Registry of Religious Communities*.

Following the introduction to the new system of recognition and registration, an attempt is made to test the recognition question by looking at empirical case evidence, key aspects and analysis of Islamic religious law in 25 recognised Islamic religious communities in Denmark. These 25 communities have in the last 18 months after the law came into force uploaded their financial records, articles of association, central rituals and basic doctrines of faith unto the webpage of the Registry of Religious Communities. This material totals 162 documents and 979 pages and this empirical material is examined in the analysis of six relevant aspects of Islamic religious law.

Finally, the research questions regarding the understanding of sharia as legal fact in Denmark and the noteworthy implications of legal recognition are discussed, and conclusions are drawn on the material substance of legal recognition of Islamic religious communities in Denmark.

4 C.f., Taylor, Charles. "The politics of recognition." *New contexts of Canadian criticism* 98 (1997): 25-73, or, Modood, Tariq. "Anti-essentialism, multiculturalism and the 'recognition' of religious groups." *Journal of Political Philosophy* 6.4 (1998): 378-399.

Concept and theoretical observations on legal recognition

Recognition may be many things and indeed the literature on philosophical, psychological, political and legal aspects of recognition is vast. For the present purpose, I will consider the normative aspects of recognition as distinct from recognition as intellectual or cognitive understanding of facts or impressions, and as distinct from recognition as mere identification or as a reconfirmation of such understood facts and impressions. Or even, in opposition to historical laws and policies of toleration that were very much tools of one-sided supremacy (Samuels 1981, 246).

A precise, albeit conceptual, definition of recognition is proposed by Heikki Ikäheimo as “always a case of A taking B as C in the dimension of D, and B taking A as a relevant judge” (Ikäheimo 2002, 450). For the present purpose, it may be tentatively phrased along the lines of, “Danish authorities (A) taking Islamic communities (B) as Recognised Religious Communities (C) in the dimension of the relevant criteria and requirements according to law (D), and the Islamic communities (B) take Danish authorities (A) as relevant judges.” Here, both identification (‘B’ as ‘C’) and judgement (‘A’ taking ‘B’) is implied.

Criticising this, it has been discussed if recognition should not be understood more widely than this, merely as proper or adequate regard or acknowledgement? However, as discussed by Paddy McQueen recognition must be understood more specifically, as “it requires not only that someone be recognised by another, but that the person being recognised judges that the recogniser is capable of conferring recognition” (McQueen 2011). By the very nature of the normative aspects of recognition, it seems mutual or reciprocal relations in recognition must be included, exactly because normativity is indeed relational and interpersonal, and recognition expresses a fundamental normative assessment in social relations.

From this question of a wider social or political versus a narrower legal understanding of recognition, two related precepts must be remembered. Firstly, a politically governed state may in its legislation assume only to recognise as adequate regard or toleration, and not engage in any mutual commitment. That is part of sovereignty and speaks to any state’s freedom to commit itself. Secondly, however, in any inter-relational context, this does not satisfy the very basic criteria of what constitutes a right and rule of law. If a state does commit itself to protect rights, it takes upon itself an obligation, establishing a mutually committed relationship through those rights. In the rule of law discussions

of the 20th century, the focus on legal recognition as a basis of rights and legislation have been prevailing. Both Hans Kelsen and H.L.A. Hart discussed important aspects of legal recognition.

Kelsen, in his article on 'Recognition in international law,' argues that in simple terms the act of legal recognition is an establishment of fact, and that recognition must be "the establishment of the fact that a given community has satisfied [particular] conditions" (Kelsen 1941, 608). A court recognises a legally relevant fact; "Only by the act of recognition does it come legally into existence in relation to the recognizing [...]" (Ibid.). A complex discussion of legal facts may be entirely relevant at this point but suffice it to highlight that usually or most commonly, courts and other ruling bodies establish legal facts. They make explicit that something is, in legal terms. Specifically, that something is recognised by the courts, means that the courts see it, and that it is admissible, legal, valid, or to be taken into consideration, and so on by the judges or authorities in power. In recognition of religious communities, authorities see whether they are in legal accordance with the definitions in the law and that it has satisfied particular conditions, to paraphrase Kelsen. A misunderstanding at this point would be to assume that the judges or authorities make such communities come into existence, produce them, or give them legal personality. That is not the case. As such, they recognise the factual state of the particular conditions of the communities, in relation to the law, that is the *Act on Religious Communities outside the Church of Denmark*.

H.L.A. Hart, however, holds that legal recognition is what makes norms (laws, in particular) valid, rather than just power-conferring, imperatives or commandment norms (Hart 1961, 92).⁵ Hart analyses the second-order rules of recognition, which he sees as integral to the constitution of a legal system. The core of legal recognition is to acknowledge soundness, justice and validity, and as such subjects of a law will adhere to it if the judiciary maintains its legality, and the judiciary will maintain a law that the subjects of the law recognises as legitimate. In that sense, recognition is a kind of performative construction or mutual agreement on an order or set of facts (Ibid., 97). Considering both Kelsen and Hart, we might say that legal recognition is bringing legal facts into existence by mutual agreement and qualified reciprocity.

5 In Hart's legal philosophy these are the rules of change and rules of adjudication, and they prescribe the proper and just use of power and how to enact new laws without revolution and how to punish crimes. These are the powerconferring norms that enable one norm to sanction another, that is, be impossible by the judiciary and enactable by the executive.

This brings us inevitably to the question, of what recognition implies. A human being is recognised by dignity. A state is recognised by sovereignty. A law is recognised by validity. What is the material object for religious communities that is recognised, and what indeed are the objective criteria that needs to be met in order to be recognised as part of that appropriate normative category?

This is the core question of the present endeavour, as we find in the overall definition and from the conceptual discussion that recognition is deeply embedded in the complex social nature of law and politics. It is also exactly here we find the sources of this recognition: in the recent politically enacted *Act on the Religious Communities outside the Church of Denmark* and in the relationship of that legislation with the autonomous and recognised expressions of religious law embedded in religious communities' articles of association, constitutions and codes of faith.

Legal recognition in the Danish context, past and present

Recently, the question of explicit or implicit recognition of the religious law – here, Islamic religious law, specifically – has re-emerged in Denmark. Following several decades of discussion on religious communities, generally, and also, specifically the nature, moral and law of Islamic communities, in December 2017, a bill was passed in the Danish Parliament (*Folketing*) that collected and clarified rights and privileges concerning the affairs of religious communities outside the Evangelical-Lutheran Church of Denmark. In many ways, this bill ratified many of the existing executive practices in Denmark and gave clear and explicit language to the expectations and privileges of religious communities. Taking effect on 1st January 2018, this new *Act on Religious Communities outside the Church of Denmark*⁶ sets the frame for state and religion relations in Denmark, and it does so by making the executive instruments that confers recognition upon dissenting religious communities part of statutory law.

Legal recognition in the past

As a starting point, the Danish Constitutional Act from 1849 sets the legal frame of the relationship between the state, the Church of Denmark and 'the religious communities other than the Evangelical-Lutheran Church of Denmark,' as they are

6 Lov om trossamfund uden for folkekirken, LOV 1533, 19/12/2017, <https://www.retsinformation.dk/Forms/r0710.aspx?id=196402> accessed 6 January 2019.

referred to in Article 69.⁷ While the constitution has been amended since – most significantly with the introduction of parliamentary sovereignty in 1901 – it seems that the “constitutional law governing relations between State, Church and Religions has not been changed in the 160 years since 1849” (Christoffersen 2010, 147). As for fundamental principles, the constitution guarantees freedom of religion and belief as long as nothing is taught that goes against morality or public order, and there is no legal requirement in Denmark to register or be approved in matters of belief, faith or religion (article 67). Denmark remains secular in the sense that at no point is religion required in interaction with the public or state.

Concerning minority religion and dissenting religious communities in Denmark, article 69 of the constitution enables Parliament to regulate other religious communities: “The affairs of religious communities other than the Evangelical-Lutheran Church of Denmark are regulated by an Act,” (*My Constitutional Act* 2012, 39). The English translation is more benevolent than the original Danish, which has the word ‘deviant’ rather than ‘other’ in defining the relationship to state, speaking indirectly to the special relationship with the Evangelical-Lutheran Church of Denmark. In the constitutional drafting drafting, it was left to the young Parliament to act on this article, but the promise was never fulfilled. For years, rules and regulations to recognise and approve religious clergy and communities to perform ceremonies and weddings were left to the executive practice of the Ministry of Ecclesiastical Affairs and other ministries to govern executively *ad hoc* and as part of public law, that is, not specific ecclesiastical law (Roesen 1976, 353ff). This was changed with the 2018 statute.

As part of the preliminary work for the draft of the Act, a committee was set up to prepare a white paper on the legislative potential for enacting the fulfilment of the constitutional promise in article 69 (*Betænkning 1564*, 2017). From February 2015 to February 2017, this religious community committee held 15 meetings and invited several of the recognised and approved congregations and religious communities to discuss their work and progress. In their white paper, the committee discussed in some detail the idea and meaning of ‘recognition’ in the Danish context, as it ties the legal position of religious communities closely to the right to officiate marriages with civic legal validity. On legal recognition of religious communities, the committee writes;

7 The Danish Parliament has published a semi-official English translation of the constitution, *My Constitutional Act* (2012) with explanations by and in consultation with Supreme Court Judge, Jens Peter Christensen.

Recognition as a religious community gives the religious community special economic privileges and the possibility of being delegated public jurisdictional authority in the right to officiate marriage with civic legal validity. This Committee understands that, in return for these special rights, the state may require the religious community to function in a way that meets - and at least is not in direct contradiction to - fundamental societal values, including democratic ideals, as well as the fundamental principles of law applicable to the exercise of public authority (*Betænkning 1564*, 38).

The idea of reciprocity in recognition is clear in the language of for ‘rights,’ state ‘in return’ ‘may require.’ Specifically, it echoes the existing executive practice as conducted by the so-called Advisory Committee on Religious Communities. However, the conceptual understanding of legal recognition for religious communities originates much earlier in Danish legal history.

August Roesen, who was permanent secretary at the Ministry for Ecclesiastical Affairs from 1964 to 1979, gives one of the fullest expositions of a legal understanding of recognition of religious communities. In his *Danish Ecclesiastical Law*, he traces the idea of legal recognition back to the idea of tolerance, and notes that as a general rule, it was illegal to confess to any other religion than the Evangelical-Lutheran, which of course echoes the *cuius regio, ejus religio* [“whose realm, his religion”] principle. However, a few places in the Danish realm and Schleswigian duchy, as in Fredericia and Frederiksstad,⁸ Reformed, Catholic and Jewish dissidents were allowed by royal decree to celebrate baptisms and marriages as long as they remained loyal and obedient subjects. The Jewish community, e.g., was recognised already in 1685. The original Danish constitution from 1849 in fact distinguishes between recognised and other religious communities, and when Methodists in 1862 sought recognition, the Ministry of Ecclesiastical Affairs had to unfold what recognition meant. Strictly speaking at the time, only the Church of Denmark was recognised by law – by the constitution – and no statute was given, and no executive recognition existed. Lisbet Christoffersen argues that ‘official recognition,’ that is legal recognition based in the constitution, was – before 2018 – limited to the

8 Both cities are named after their founding prince, Frederik. However, they were two different men, not to be mistaken. Fredericia was founded by Danish King Frederik the 3rd (1609-1670) in 1650 and Frederiksstad was founded in 1621 by Frederik the 3rd, Duke of Slesvig-Holsten-Gottorp (1597-1659).

Church of Denmark in the identification with the Evangelical-Lutheran faith in Article 4 of the Constitutional Act. This ‘recognition’ means recognition of the Danish state’s explicit responsibility towards the specific church that is the majority church of the people in Denmark – and only as long as it remains a majority church.⁹ The ministry explained recognition with specific criteria regarding morality, public order, theological and organisational firmness.¹⁰ In the language of the ministry at the time, it is these criteria that leads to ‘Eligibility to be acknowledged as an independent ecclesiastical community (Heide-Jørgensen 2002, 282). Here the word for acknowledge in Danish is ‘*erkende*,’ which is integral in the word for recognition, ‘*anerkendelse*,’ and echoes the English (and Latin) ‘cognition’ and ‘recognition.’ From this, the notion of legal recognition in the Danish context develops. It is an understanding of factual conditions that is linked to a sanction or approval of those conditions by an active act of the king or authorities, which is the actual recognition that brings with it certain rights or privileges guaranteed by the king or authorities.

Axel Honneth, who has studied recognition most thoroughly, points out that visibility and cognition are the prerequisites for the acknowledged or esteem, as the operative idea in recognition. Recognition is an active and expressive act that shows the recognised that they are indeed seen and that they are worthy of solidarity and community (Honneth 2003, 98ff). As demonstrated historically and in the recent white paper, legal recognition in the Danish context is not just an acknowledgment of the beliefs of religious communities or their mere existence, but an acknowledgment of a reciprocal (although not equal) relationship between state and the concrete religious community. This relationship is rooted in the delegation of authority and is characterised by the condition that privileges can be revoked if the communities do not live up to criteria or comply with requirements.

9 Christoffersen, Lisbet, “Religion and State: Recognition of Islam and Related Legislation,” in Nielsen, J.S. (ed.), *Islam in Denmark. The Challenge of Diversity*, Lanham, MD: Lexington, 2012, p. 76.

10 C.f. Norman Doe’s summary list of criteria requires religious groups to satisfy for recognition in terms of “size, beliefs, statutes, rites, and the compatibility of these with State law.” Doe 2011, 101.

Legal recognition in the present

For the practical question of legal recognition of religious communities in Denmark, the 2018 statute introduces two new, significant ideas; recognition by ministerial ordinance and a registry of religious communities.

Firstly, for dissenting communities there is now just one category; recognised by ministerial ordinance. Before 1970, a total of 11 religious communities were recognised by royal decree, and with the Marriage Act of 1970, the ministry was given competence to approve by ministerial ordinance, and recognition by royal decree was no longer used. The legal effects of these two tiers were comparable, but symbolically seen as much different.¹¹ In specific terms, the Act¹² specifies that,

§ 7. A religious community can be registered as a recognised religious community, if it:

1. has at least 50 permanent members who either have a permanent residence in Denmark or Danish nationality, and
2. does not encourage or do anything that violates the provisions of law or regulations laid down by law.

Subsection 2. The request for recognition shall include the following information:

1. Name and home of the religious community.
2. Number of adult members of the religious community.
3. The Articles of Association of the religious community.
4. Name and address of the contact person who is responsible in relation to the Religious Register.
5. A text that expresses, describes or refers to the foundation of faith or doctrine in the religion of the religious community. .

11 Former Supreme Court Justice, Henrik Zahle, said of the Danish tier structure, that "The current Danish regulation of religious communities outside the Church of Denmark is not satisfactory. The - alternating - differential treatment of 1) Church of Denmark, 2) recognised religious communities and 3) approved religious communities seems hardly sustainable." Zahle, Henrik. *Dansk Forfatningsret*, 3. udgave, DJØF Forlag 2003.

12 Lov om trossamfund uden for folkekirken, LOV1533, 19/12/2017, <https://www.retsinformation.dk/Forms/r0710.aspx?id=196402> accessed 6 January 2019.

6. Documentation or description of the religious rituals of the religious community.
7. The most recent financial statements, which must be audited and give a true and fair view of the financial situation of the religious community.

The second idea is that now there is a legal framework for revoking the recognition, if the religious community no longer lives up to the specified criteria. This has been theorised as an option that the ministry has always had, but there have been no cases, and there were never any control or inspection with the communities. Therefore, the new Act puts into effect a Registry of Religious Communities (Art 7, subsection 4: “Recognition is listed in the Registry of Religions Communities, which is allocated to the Ministry of Ecclesiastical Affairs”). Furthermore, it sets up a number of continuing requirements that the communities must adhere to, including annual reports as well as submitting their constitutions or articles of association to the ministry. This is regulated by the executive order on the Registry of Religious Communities from 15 November 2018,¹³ which specifies that,

§ 3. The purpose of the religious community register is to ensure easier access to insight into which religious communities are recognised and which congregations are covered by a religious community's recognition, and insight into their economic and organisational conditions.

§ 4. When a religious community with any associated congregations have been recognised, the Ministry of Church Affairs establishes a separate ‘page’ for religious communities and the individual congregation in the religious community register, which gives the religious community and possibly associated congregations the right to report information on the matters specified in sections 10 and 11.

In effect, this means that at the end of the 18-month grace period offered by the ministry, ending 9 September 2019, some 25 of about 28 recognised Islamic religious

13 *Executive order on the Registry of Religious Communities 15/11/2018*, <https://www.retsinformation.dk/Forms/R0710.aspx?id=204953> accessed 6 January 2019.

communities have uploaded their financial statements, articles of association, a description of their central rituals and a statement of their basic doctrines of faith.

Returning to the overall question of whether Islamic religious law is recognised, we now know that both in the theoretical and in the Danish historical discussion recognition implies reciprocity, that the religious communities are understood as legal fact, and that there are explicit standards and criteria that must be met. Simply put, being recognised means being recognised *as* something, i.e., a religious community, and recognised *for* something, namely the material content referred to in statute and executive order. These criteria are the same for all who apply, be they Christian, Jewish, Muslim or any other faith, but as Norman Doe notes in his preface, these facts and equal criteria have much different political reception, with sharia being the most controversial (Doe 2018, viii).

Testing the cases: empirical evidence, key aspects and analysis of Islamic religious law

The second main part of this article pursues an exploratory study into the material content of the Islamic religious communities in Denmark.

The material

The ministry had defined a gracious timeframe for the all recognised religious communities to meet the requirements, so that the documents of all of the 28 recognised Islamic religious communities would be available online. As of 9 September 2019, 25 communities that are now considered recognised have uploaded their financial statements, articles of association, central rituals and basic doctrines of faith unto a webpage, which is the Registry of Religious Communities' public list of recognised religious communities.¹⁴ The material of these 25 communities is the empirical basis of this paper – a material of some 162 documents in 979 pages.

14 This is the general page of the Registry for Religious Communities, and it has both a selection option for religious denominations, <http://www.km.dk/andre-trossamfund/trossamfundsregistret/liste-over-ankendte-trossamfund-ogtilknyttede-menigheder/> accessed 6 January 2019.

Key aspects

In order to analyse the material content of the Islamic religious law as explicit or implicit in the documents, six analytical key aspects are defined and sought in the material.

To understand the recognition of the Islamic religious law, it seems necessary to operationalise what we mean by Islamic religious law and demonstrate how it resonates with the living legal practice amongst Muslims in Islamic religious communities. It is a long and difficult discussion to define Sharia or Islamic religious law in practice, but some of the most relevant aspects or tell-tale indicators of Islamic religious law are presented and pursued analytically here. Others might have been chosen and more detailed introduction given to each, but for the present purpose, it is enough to establish with fair certainty that Islamic religious law is identified in the documents that form the basis of the ministerial recognition. The key analytical aspects highlighted here are some of the same aspects as form the structure of the ten chapters in Norman Doe's *Comparative Religious Law – Judaism, Christianity, Islam* (Doe 2018, 5) and include the objectives of the communities, their legal self-understanding, their legal practices and activities, their relationship with the governing Danish jurisdiction and the role of religious law in membership issues:

- a. Explicit or implicit reference to sharia, Islamic religious law or similar in the definitions, purposes or objectives in the articles of association. [Indicator: "Purpose"]
- b. Explicit or implicit reference to the legal schools of Islam. [Indicator: "Legal School"]
- c. Explicit or implicit reference to counselling, mediation or conflict resolution according to Islamic legal principles (echoing what is commonly referred to as Sharia councils or courts). [Indicator: "Islamic counselling"]
- d. Explicit or implicit reference to the supremacy of the Danish legal jurisdiction and rule of law. [Indicator: "Danish law"]
- e. Explicit or implicit mention of Islamic legal principles in membership definitions, issues, or termination. [Indicator: "Membership"]

- f. Explicit or implicit reference to marriage procedures, rituals or validity, either according to Islamic or Danish legal principles.

[Indicator: “Marriage”]

Central quotes and statements cited to substantiate where each of these six aspects are identified, and the operative key words are stressed. They are all translated from Danish into English for this occasion.

Analysis

Before unfolding the analysis of the aspects of Islamic religious law found amongst the recognised Islamic religious communities, a few general observations are warranted.

All of the Islamic religious communities list the five pillars of Islam. This is important to note, as not only are these key to understanding the rituals, code and conduct requirements of Islam, but many Muslims consider the Islamic practice to be embodied in the five pillars and that these are of course regulated by Islamic religious law.¹⁵ All of the communities organise their articles of association with a general assembly, a board of directors, financial responsibilities, procedures for termination and so on.

None of the 25 Islamic religious communities mention sharia or ‘Islamic law’ as such, and none of them, neither explicitly nor implicitly, refer to all six of the identified analytical aspects. However, in terms of specific observations, all six of the identified aspects can be found across the 25 Islamic religious organisations. The most telling aspects are presented here, but all of them are available online.

In the definitions, purposes or objectives in the articles of association, aspects of Islamic religious law are evidenced in the *Danish Turkish Islamic Foundation’s* declared purpose to care for “Muslims in an appropriate manner to perform their religious duties,”¹⁶ “to provide facilities for moral development,”¹⁷ and to do so “in accordance with Islamic procedures.”¹⁸ Similarly, the purpose of *The Islamic Faith Community* is to “carry out the religious interests, obligations and rights of Muslims to God, themselves and their

15 Murata, Sachiko, and William C. Chittick. *The Vision of Islam*. New York: Paragon House, 1994. p. 8.

16 Articles of the *Danish Turkish Islamic Foundation*, art. 2, ‘Purpose,’ A.1.

17 Articles of the *Danish Turkish Islamic Foundation*, art. 2, ‘Purpose,’ A.3.

18 Articles of the *Danish Turkish Islamic Foundation*, art. 2, ‘Purpose,’ A.10.

surrounding communities”¹⁹ and to “collaborate with the surrounding community properly with the best manners and correct etiquette.”²⁰ The *Islamic Centre West* is based on the liberal view, that “the Muslim population can pray and implement its norms in Danish society.”²⁰

The legal schools of Islam are mentioned explicitly among a few of the religious communities as part of the basis of their articles or their central rituals or for the welfare of Muslims. “The Islamic Religious Society of Bosniaks in Denmark is based on the Sunni Muslim denomination, the Hanafi School of Law (named after Imam Abu Hanifa) and the Maturidi Law School, which is one of the largest law schools in Sunni Muslim Theology.”²¹ It is clear from this that in the directions of the legal schools of Islam there are also many concrete instructions and directions for rituals and for doctrine, and that these are of a legal as well as theological nature. One relevant example from the literature of this could be to note that the Hanafi legal school “insists that trading with non-Muslims is a necessity for the sake of public welfare,” as Khaled Abou El Fadl highlights, “but that a Muslim should not sell weapons to non-Muslims” (El Fadl 1994, 149).

For a number of obvious and quite pragmatic reasons, the Islamic communities have had to deal with both uncertainty and conflict amongst a Muslim minority in Denmark. They offer therefore guidance, Islamic counselling and mediation on several topics and areas, from strictly religious issues, to family affairs and outright conflict. The *Muslim World League* lists as part of their purpose in their articles “Assisting in tackling and resolving issues facing Muslims and others and averting conflict and disagreement factors.”²² This is done by the *Muslim World League*, as part of an international non-governmental Islamic organisation that refers to their Islamic Fiqh Council in Mecca.²³ Most of the communities are very implicit with this, and may

19 Articles of *The Islamic Faith Community*, art. 2, ‘Purpose,’ section 1.

20 Articles of *The Islamic Faith Community*, art. 2, ‘Purpose,’ section 2.

21 Central rituals of *The Islamic Religious Community of Bosniaks in Denmark*. Obviously from the context in the quote, the drafters of the central rituals have made an error here. The Maturidi school is a theological school and not a law school, and they do not follow two different legal schools.

22 Articles of *Muslim World League*, art. 2, ‘Purpose.’

23 Introduction to *Muslim World League*.

make reference to ‘Ulama’ (Islamic legal scholars)²⁴ or an Islamic legal knowledge requirement.²⁵ The *Islamic Centre for the European Countries*, however, are surprisingly explicit, and clearly state that “the Centre issues legal Islamic judgments and responses in all matters relating to Islamic faith, rules, marriage, divorce, conduct, inheritance, and halal / haram issues, all based on the Al-Qur’an, the Sunnah, and the consensus of Muslim scholars and analogies.”²⁶ Here there are clear potential for conflict with the jurisdiction of secular Danish law in questions of inheritance and divorce, in particular, if the Islamic Centre for the European Countries really do mean ‘legal Islamic judgments.’ A likely alternative explanation is that this is a language issue, or that perhaps the community tries to project a more formal appearance than is actually the case.

Many of the 25 Islamic religious communities recognise the Danish legal jurisdiction and rule of law. The *Madina-Tul-Ilm Education Centre* have listed in their purposes that, “the association accepts and complies with the Danish laws and regulations, [and] ensures that every activity in the association complies with Danish laws and regulations.”²⁷ The *Danish Turkish Islamic Foundation* highlights that they are founded “according to the Ministry of Justice’s approval,”²⁸ and stresses that “the foundation carries out no activities that are against Turkish and Danish law as well as against national values and do not participate in politics.”²⁹ This last phrase about politics remains polemically contested after the attempted coup d’état in 2016, especially as the Turkish Embassy in Denmark has been collecting detailed personal information on

24 “The Association’s Board of Directors. (Section 4) The Chairman shall be elected by the General Meeting from among the Imam (Ulama) who is present at the General Meeting and has been members of the Association for at least two years.” Articles of *Madina-Tul-Ilm Education Centre*, art 5.

25 For seeking a seat on the board of *The Islamic Faith Community*, “the individual must know how the scholars derive their decisions and regulations based on recognised evidence, and the ability to understand detailed research topics by posting in acknowledged source materials as well as asking recognised specialists for topics requiring rooted knowledge.” Appendix, Articles of *The Islamic Faith Community*.

26 ICEL in the text they uploaded as central rituals.

27 Articles of *Madina-Tul-Ilm Education Centre*, Art 2 ‘Purpose,’ 2.3.

28 Articles of the *Danish Turkish Islamic Foundation*, art 1.

29 Articles of the *Danish Turkish Islamic Foundation*, art 2, ‘purpose,’ C.

Danish-Turkish individuals in opposition to Erdogan, calling it ‘a state’s reflex after a terrible attempted coup.’³⁰

As for membership, *Aarhus Islamic Faith Community* welcomes individuals of Islamic faith, “who undertakes to comply with the congregation’s laws,”³¹ and *The Islamic Faith Community*, requires members to “possess good Islamic behaviour and good Islamic morality.”³² Here the definitional line between questions of faith, morals, ethics and law are blurred, but it is important to note, that questions of faith absolutely (and obviously) have legal consequences for members.

The final observations of the aspects of Islamic religious law regards marriage, as ‘performance of weddings with civil legal validity’ is one of the most substantive privileges to follow from the recognition. For the *Albanian Religious Community in Denmark* it is part of their purpose that they “conduct marriages and funerals according to the prescriptions of Islam and Albanian custom.”³³ This is the delegated authority that is the basis of the reciprocity in the recognition. It seems for some of the communities, the jurisdictional nature of the question is over-emphasised, as they describe in their central rituals that “After this, the couple is considered to be legally validly wed to each other, then they must of course publicly register according to Danish law.”³⁴

Implications and conclusions

From the articles of association and other key documents from the process of recognition it has been demonstrated that at least six substantial aspects of Islamic religious law are core parts of the material substance of legal recognition of Islamic religious communities. On that basis, we may conclude that, indeed, Islamic religious

30 “Leader of the Turkish Imams in Denmark: Yes, we collect information on Erdogan opponents,” [“Leder for tyrkiske imamer i Danmark: Ja, vi samler information om Erdogan-modstandere”], <https://www.kristeligt-dagblad.dk/kirketro/leder-tyrkiske-imamer-i-danmark-ja-vi-samler-information-om-erdogan-modstandere>, accessed 6 January 2019.

31 Activities in Islamic congregations, *Aarhus Islamic Faith Community*.

32 Articles of *The Islamic Faith Community*, art 4, on ‘Organisation,’ 3 on ‘Membership,’ section 3.

33 Articles of the *Albanian Religious Community in Denmark*, art 3 on ‘Purpose,’ section 2.

34 Compare, Central rituals of *The Islamic Religious Community of Bosniaks in Denmark*, and TAI-BA, text on Islamic rituals.

law is considered a relevant and legal fact in Denmark. It seems a bold, but appropriate statement to say that sharia is legally recognised in Denmark – at least in part.

The material substance of the recognition of Islamic religious communities is in part religious law as explicit throughout the documents. Such recognition in Danish regulation of religion, is twofold. The first regards the freedoms and obligations of religions communities as drawn from the constitution, while the second regards the new specific criteria and requirements.

As for general freedoms of religious communities, religious law – including Islamic religious law – is included in the freedom of religion and freedoms to worship and to freely organise, as long as nothing is taught that violates morality and public order, as per the constitution article 67. Therein lies a degree of autonomy, which also extends to principles from different Islamic legal schools and further, contemporary Islamic legal self-understanding and ethics, as expressed through out the documents. Not all ideas or principles from the Islamic legal tradition are applied by the communities, nor would they likely be accepted, of course, and this discussed in parliament during the readings of the bill, but the ones that does not violate ‘morality and public order’ are surely both applied and included in the autonomy of freedom of religion.

Specifically for the recognition regime, there are standards that must be met. The mutuality implies that being recognised means being both recognised *as* a religious community, but also recognised *for* the material content demonstrated in the articles of association, descriptions of basic faith and key rituals. Recalling the introductory discussion of what recognition means and implies, we may conclude that for the Islamic religious communities, recognition is a mutual agreement on the legal facts presented in the documents and the criteria of Danish law. Concretely, these legal facts were specified as the six related aspects of principles of Islamic religious law from the documents. Granted, while many religious communities might not always live up to their own articles and principles, there is a profound mutual recognition of these as legal fact, which means, on the one hand that the freedoms and privileges of recognised Islamic religious communities includes Islamic religious law, but on the other hand, it also means that the Danish law and administration governs.

With this insight comes a few final remarks on what such recognition does and does not imply.

Firstly, both from a scholarly and from a legal point of view great care must be taken in establishing factually what is meant and what is practiced, when talking generally about sharia and specifically about Islamic law, ethics and practice. This means that the administrative body that recognise religious communities must be very clear in specifying that recognition is as something particular, not as something general or abstract. It is the specific community, the specific practice, and the specific iterations of sharia that is recognised on the basis of specific material and application. Recognition is not general, nor is it comprehensive of what sharia is elsewhere or has been in the past.

Secondly, legal recognition of the fact that sharia is part of Islamic religious communities does not imply the idea that sharia should be considered a valid source of law in Denmark. The idea that sharia should be the basis of the rule of law is not implied in the Danish recognition regime. Rather, the mutuality implied underscores that Danish law, administration and adjudication has complete jurisdiction, that 'morality and public order' as well as the other specific requirements is maintained, and that the recognition is contingent upon these preconditions.

Thirdly, in light of recent debates in Denmark and the rest of Europe, it is important to maintain that legal recognition is not political recognition. The kinds of performative language, social inclusion and active appreciation that may be politically produced is not at all at play here, and many Muslims may not see themselves as recognised in extension from this legal status. This is distinctly legal recognition as executive recognition rather than political recognition and, as of 2018, it is governed by law. However, as such, it is qualified reciprocity and mutually constructive commitment of those Islamic communities who adhere to the criteria and requirements and the executive administration that recognises this.

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