

Conflict of Laws Rules in Kazakhstan's International Family Law: Implications for Cross-Border Muslim Marriages

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Abstract

This study identifies gaps in the conflict-of-laws framework governing family relations in Kazakhstan, with particular attention to cross-border Muslim marriages. Using comparative legal analysis, legal modelling, and doctrinal analysis, it examines Kazakhstan's legislation alongside that of France, Germany, Greece, and Japan, selected for their differing approaches to the law applicable to marriage. The comparative findings and resulting typology are assessed against the development of Kazakhstan's family law. The study finds that the 2011 Family Code shifted from a mixed conflict-of-laws approach towards the exclusive application of Kazakhstani law, creating legal uncertainty for foreign nationals, stateless persons, and parties to cross-border marriages. The absence of specific conflict-of-laws provisions limits the legal framework available to courts when addressing Islamic family law institutions, including mahr as a financial entitlement arising from marriage, the validity of nikah concluded abroad, post-divorce custody under hadana rules, and the recognition of talaq. To address these gaps, the study recommends restoring bilateral conflict-of-laws rules in Kazakhstan's Family Code and introducing specific provisions governing foreign matrimonial

property regimes and the recognition of marriages concluded through religious ceremonies. It contributes to scholarship at the intersection of Islamic family law and private international law by identifying the legal difficulties arising from the interaction between Kazakhstan's secular legal framework and Islamic matrimonial institutions. The findings highlight the need for clearer rules on applicable law and recognition to improve legal certainty in cross-border family relations.

Keywords: conflict-of-laws rules; cross-border Muslim marriages; Islamic family law; Kazakhstan; private international law.

Introduction

The institution of marriage is an important aspect of modern civil law that defines the legal status of individuals within a family. In the context of globalization and increasing migration, international marriages have become more prevalent. This growth reflects greater freedom of movement, an expanded geographic pool of potential partners, and an adaptation to changes in shifting social and legal conditions. Such marriages frequently require navigating not only cultural and domestic differences but also legal barriers, underscoring the importance of their effective regulation.¹

The model of legal regulation for cross-border marriages can be understood as “an improved framework for the management of relevant family matters, which incorporates the specific aspects of entering into and dissolving marriages involving foreign nationals”.² This necessitates a comprehensive examination of the legal framework governing these matters in both Kazakhstan and other jurisdictions. Since international marriages involve at least one foreign national, they raise legal concerns. Typically, these marriages are governed by the laws of multiple jurisdictions due to conflict of laws. Transnational marriages are international marriages that cross geographical borders and involve the movement of partners between states. Cross-border marriages also fall under the umbrella of international marriages, as they involve a foreign national and require interaction between the legal systems of different countries. Accordingly, when discussing such partnerships, both the broader concept of international marriage and its subcategories may be employed.

In 2024, the International Centre for Migration Policy Development (ICMPD) projected record levels of migration driven by the escalation of armed

¹ Hélène Le Bail, “Promoting and Restricting Marriage Migrations: When Marriages Are Not Such a Private Matter,” in *Research Handbook on the Institutions of Global Migration Governance*, ed. A. Pécoud and H. Thiollot (Cheltenham, UK: Edward Elgar Publishing, 2023), 327–40, <https://doi.org/10.4337/9781789908077.00031>.

² S. A. Nikoghosyan, *Legal Regulation of the Conclusion and Dissolution of Cross-Border Marriages: Abstract of the Dissertation* (Minsk: Belarusian State University, 2014).

conflicts and increased geopolitical tensions. Even before this projection, global migration had produced a record high of 114 million. Asylum applications to the EU rose by 21.2%, reaching the highest figure since 2016.³ Within the framework of the United Nations, the World Population Prospects provides extensive data confirming these migration trends and their relevance for family law.⁴ These developments affect the lives of thousands of individuals and pose challenges for the adjudication of family law matters. When spouses of different national origins migrate across countries and change their residence, law enforcement authorities must consider international family law to determine the applicable legal regime. Legal systems vary considerably, encompassing common law, civil codes, family statutes, religious law, and customary law. Therefore, selecting the appropriate governing law can complicate the process of entering into and dissolving cross-border marriages, as well as resolving related disputes.⁵

Kazakhstan illustrates this complexity with particular clarity. According to the 2021 census, Muslims constitute approximately 69% of the country's population, and Kazakhstan is a member of the Organization of Islamic Cooperation.⁶ Nevertheless, the country's family law operates as a secular, codified system largely separated from the religious norms governing marriage, guardianship, and divorce under Islamic law. This duality becomes especially consequential in cross-border marriages involving citizens of states where Islamic family law forms part of the applicable legal regime or serves as its basis. In such cases, religiously concluded marriages, the mahr as a matrimonial property agreement, and post-divorce child custody may fall into the secular gap left by Kazakhstan's legal framework. The absence of clear conflict rules thus acquires a special role in relation to cross-border Muslim marriages. This problem is examined in detail in the following sections of the article.

The literature underscores the need for a legal framework that establishes integrated requirements and strengthens measures to promote family migration. This need is particularly evident in several Northwestern European countries with a high level of such migration: Denmark, Germany, France, Norway, the Netherlands, and the United Kingdom. In these states, public authorities, civil society, and the scientific community have devoted considerable attention to

³ Prague Process, "ICMPD Migration Outlook 2024," 2024, accessed May 25, 2025, <https://www.pragueprocess.eu/en/news-events/news/804-icmpd-migration-outlook-2024>.

⁴ UN, "World Population Prospects 2022: Summary of Results," 2022, accessed May 25, 2025, <https://www.un.org/development/desa/pd/content/world-population-prospects-2022>.

⁵ Rhonda Wasserman, "Family Law Disputes between International Couples in U.S. Courts (November 6, 2020)," *Family Advocate* 43 (2020): 22, accessed May 25, 2025, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/famadv43&div=28&id=&page=>.

⁶ Freedom of Thought Report, "Kazakhstan," 2025, accessed June 16, 2026, <https://fot.humanists.international/countries/asia-central-asia/kazakhstan/>.

international marriages. Existing research emphasizes the importance of an interdisciplinary approach that combines sociology, political science, and law to adequately interpret the complex dynamics of cross-border marriages in the era of globalization.⁷ In 2012, the United Kingdom introduced restrictive family reunification rules. Yet the variability and conditionality of these policies demand analytical flexibility and an understanding of their dynamic impact on migrants. National laws may lack the flexibility or effectiveness needed to meet the actual demands of society. These limitations, for instance, have allowed British citizens to circumvent EU regulations on free movement.⁸ The issue is equally pertinent to the integration of so-called “marriage migrants” into host countries, a process shaped by their national and ethnic backgrounds. This is exemplified by the growing number of international marriages in South Korea over recent decades.⁹

Researchers have examined the formation and dissolution of marriages, along with other family and cross-border relations, across jurisdictions with varying legal traditions (common law, the Romano-Germanic system, and Muslim law). Their findings highlight challenges in resolving conflict-of-laws issues. Given the substantial divergences in applicable legislation and legal systems, family relations and cross-border marriages warrant further investigation.¹⁰ A recent comparative study explored the historical evolution of models for the legal regulation of marriage and family matters in India and other Asian nations. The findings reveal new trends in the changing perception of marriage dissolution.¹¹

A further challenge lies in the legal regulation of same-sex marriage. Many legal systems recognize not only marriage but also registered partnerships. These partnerships are not classified as marriages, yet the criteria for entering into them may vary, particularly with regard to the sex of the parties. Belgium and Germany, for example, apply markedly different substantive rules but similar

⁷ Eleonore Kofman, “Integration Discourses, the Purification of Gender and Interventions in Family Migrations,” *Ethnic and Racial Studies* 46, no. 14 (2023): 3037–57, <https://doi.org/10.1080/01419870.2023.2166791>.

⁸ Helena Wray, Eleonore Kofman, and Agnes Simic, “Subversive Citizens: Using EU Free Movement Law to Bypass the UK’s Rules on Marriage Migration,” *Journal of Ethnic and Migration Studies* 47, no. 2 (2019): 447–63, <https://doi.org/10.1080/1369183X.2019.1625140>.

⁹ Yean Ju Lee, Dong Hoon Seol, and Sung Nam Cho, “International Marriages in South Korea: The Significance of Nationality and Ethnicity,” *Journal of Population Research* 23 (2006): 165–82, <https://doi.org/10.1007/BF03031814>.

¹⁰ S. S. Myrza and I. A. Serednytska, “Some Problems of the Realization of Marital Relation with Foreigners,” *Law and Safety* 81, no. 2 (2021): 169–75, <https://doi.org/10.32631/pb.2021.2.23>.

¹¹ Raj Yadav Kumar et al., “Social Bearing of Laws and Their Implementation with Reference to Irretrievable Breakdown of Marriage: A Comparative Study of Laws in India and Asian Countries,” *F1000Research* 12 (2023): 921, <https://doi.org/10.12688/f1000research.133515.1>.

private international law rules. Such divergence creates difficulties for international couples even within the European Union.¹²

The regulation of transnational marriages has been studied extensively in the international family law literature. Nevertheless, several gaps require the attention of researchers. For instance, divorce remains a largely underexplored field.¹³

Despite the existence of international standards and agreements, Kazakhstan and other countries lack clear and coherent legal frameworks that govern the specific aspects of international marriages. This absence can lead to legal disputes and uncertainty in the application of laws, as each country adopts its own approach to family matters and cross-border marriages. The issue extends both to the conditions for entering into marriage and to matters of divorce, child maintenance, and children's rights. Understanding these variations is essential for effective legal governance. In international family law, addressing the conflict of laws is crucial, as it determines which legal framework governs a given case when multiple jurisdictions are involved. Determining the applicable law assumes paramount importance because "substantial discrepancies persist in the substantive regulation of marriage and family matters based on diverse legal frameworks".¹⁴ In an increasingly globalized world marked by growing population mobility, legal issues related to the conflict of laws are becoming decisive. The effective implementation of international family law rules is crucial for ensuring fairness and protecting the rights of parties involved in international family conflicts. Conflict-of-law principles form the legal foundation for the fair resolution of such disputes. National courts should consider international human rights standards, whether or not incorporated into domestic legislation, to eliminate ambiguity or uncertainty in national constitutional and legislative acts.¹⁵

This study aims to identify gaps in the conflict-of-law regulation of cross-border marriages under Kazakhstani family legislation. The potential

¹² Susanne Lilian Gössl and Jinske Verhellen, "Marriages and Other Unions in Private International Law—Separate but Equal?," *International Journal of Law, Policy and the Family* 31, no. 2 (2017): 174–90, <https://doi.org/10.1093/lawfam/ebx006>.

¹³ Asuncion Fresnoza-Flot and Betty De Hart, "Introduction to the Special Issue: Divorce in Transnational Families: Norms, Networks, and Intersecting Categories," *Population, Space and Place* 28 (2022): e2582, <https://doi.org/10.1002/psp.2582>.

¹⁴ M. V. Meshchanova, "Conflict Regulation of Marriage and Family Relations under the Legislation of the Republic of Belarus: Prerequisites for Improvement," in *Family Law: Modern Problems of Theory and Practice: Proceedings of the International Round Table, Minsk, October 16–17, 2020*, ed. V. N. Godunov (Minsk: BSU, 2020), 219–25, <https://elib.bsu.by/bitstream/123456789/257533/1/219-225.pdf>.

¹⁵ UN, "International Human Rights Treaties. Core Document Forming an Integral Part of the Reports of Member States," 2024, accessed May 25, 2025, <https://tinyurl.com/ytcz69zk>.

consequences of such gaps are examined to determine the applicable law in international family disputes, including those involving marriages that partially fall under Islamic family law. Particular emphasis is placed on the need for effective protection of all parties' rights. The study draws on private international law theory and the framework of legal pluralism to analyze the coexistence of secular and religiously grounded family law regimes within a single jurisdiction.

As a general rule, modern states resolve issues related to the legal regulation of international marriage through civil codes and special codified or customary family laws. The legislation of each individual country reflects the specific cultural and religious traditions of its people.¹⁶ Researchers from diverse jurisdictions examine the ontology of marriage.¹⁷ Some studies analyze current trends in legislation governing cross-border marriages and family relations, including the use of artificial intelligence.¹⁸ Research in this rapidly evolving field extends beyond issues of statute and case law to encompass broader social and political concerns, contemporary debates in family law, and proposals for reform.¹⁹ Marriage and family matters have been explored in a dissertation on private international law.²⁰ A book published in 2016 presents the fundamental principles underlying the conflict of laws, adapted to meet contemporary demands. The book offers information that clarifies complex aspects and terminology.²¹ Another volume discusses classical legal principles and relevant materials, providing a unique resource covering the current state of family law. Key developments include marriage equality and parenting for LGBT families, non-marital families, abortion, adoption, and assisted reproductive technologies.²²

Experience demonstrates that international legal standards can be effectively implemented only when they are fully integrated into domestic

¹⁶ I. B. Ilvaysky, *Legal Regulation of Cross-Border Marriages and Family Relations: A Textbook* (Volgograd: Publishing and Printing Center of the Volgograd Institute of Management, 2021).

¹⁷ I. A. Trofimets, "The Ontology of Marriage: Russian and Foreign Teachings," *The Journal "State and Law"* 12 (2012): 59–68, <https://gospravo-journal.ru/s1026-94520000617-6-1-ru-779/>.

¹⁸ D. Shepherd and A. Laurence, "How Artificial Intelligence Could Impact the Future of Family Law," *Family Lawyer Magazine*, 2020, accessed May 25, 2025, <https://familylawyermagazine.com/articles/artificial-intelligence-and-the-future-of-family-law/>.

¹⁹ Kate Standley, *Family Law*, 7th ed. (Singapore: Palgrave Macmillan, 2010).

²⁰ B. A. Dzhandarbek, "Legal Regulation of Marriage and Family Relations in the Republic of Kazakhstan" (Dissertation, Kazakh National University named after Al-Farabi, 2010); G. Y. Fedoseeva, "Marriage and Family Matters as an Object of Private International Law of the Russian Federation" (Dissertation, Moscow State Law Academy, 2007).

²¹ Jonathan Hill and Máire Ní Shúilleabháin, *Clarkson & Hill's Conflict of Laws* (Oxford: Oxford University Press, 2016), <https://doi.org/10.1093/he/9780198732297.001.0001>.

²² D. Kelly Weisberg and Courtney G. Joslin, *Modern Family Law: Cases and Materials* (Boston, MA: Aspen Publishing, 2024).

legislation. National human rights standards, enshrined in constitutions and other legal acts, provide guarantees for human rights and establish mechanisms for their protection and recognition. The legal norms and principles of domestic legislation must comply with international human rights standards; they cannot remain merely declaratory. The incorporation of international law into a state's domestic legal order extends beyond formal adherence to international conventions and agreements related to international marriage. It also requires a set of interrelated mechanisms: laws fulfilling international obligations; by-laws specifying the application of international standards; the use of international law in law enforcement; and specialized bodies that monitor and coordinate implementation. Educational programs for law enforcement agencies and the involvement of civil society institutions are equally necessary. Together, these mechanisms transform international law from a declaratory instrument into an applicable one, shaping both national legislation and law enforcement practice.²³

In most countries, legislators prioritize the conflict-of-law rules of international family law when developing and adopting family codes and related provisions. The Romanian approach to determining the applicable law in cross-border marriage cases exemplifies an effective strategy for establishing jurisdiction and ensuring mutual recognition in family and marriage matters. Romanian private family law has developed conflict-of-law principles that streamline the regulation of international marriages.²⁴ Kazakhstan, by contrast, has undergone a less successful legislative process, marked by a lack of clarity and consistency in the rules governing jurisdiction and mutual recognition. In the course of transforming family law, key standards of private international law (such as conflict-of-law rules and the determination of applicable law) have not been adequately addressed. This situation underscores the need for continued efforts to improve Kazakhstan's family legislation concerning the legal regulation of transnational marriages.²⁵

Comparative literature has given insufficient attention to states where secular conflict-of-laws frameworks must interact with Islamic family law norms. Questions of marriage validity, the mahr as a matrimonial property obligation, and post-divorce custody are governed by distinct rules in Islamic law jurisdictions. These differences create specific difficulties when such institutions

²³ Zhanna Khamzina et al., "Towards Nondiscrimination and Gender Equality: The Role of International Labor Standards," *Sustainability* 14, no. 9 (2022): 5349, <https://doi.org/10.3390/su14095349>.

²⁴ Cosmin Dăriescu, "New Romanian Choice-of-Law Rules on Marriage Effects," *Analele Științifice ale Universității Alexandru Ioan Cuza din Iași, Seria Științe Juridice* 58, no. 2 (2012): 91–102, <https://doi.org/10.2139/ssrn.1537200>.

²⁵ Maidan K. Suleimenov, "Why Does the Code on Marriage and Family Aims to Destroy International Family Law?," Zanger, 2023, accessed May 25, 2025, <https://zangerlf.com/ru/publications/265>.

are brought before secular courts.²⁶ Common law practice demonstrates that secular courts systematically struggle to characterize property obligations arising from marriage contracts concluded under sharia norms. One example is the question of enforcing the mahr as a wife's property right upon divorce.²⁷ This problem is equally pertinent in Kazakhstan, where the Muslim population constitutes a substantial majority, yet the Family Code provides no regulation of such cases.

The introduction of information systems for marriage registration has become a common practice and is gaining popularity in various countries. The trend toward online marriage is driven not only by its potential to reduce time and financial expenses but also to its capacity to prevent fraud. For international and transnational marriages, such systems serve as an important tool for ensuring legal certainty, maintaining transparency, and streamlining procedures. These aspects become particularly serious in light of differences in national laws. Recent studies support the integration of cutting-edge technologies into legal procedures in order to enhance the accessibility and clarity of marriage processes at the international level.²⁸ Legal acts governing online marriages must comply with the requirements and provisions of traditional offline marriage contracts. Establishing regulations for online marriages not only validates such agreements but also facilitates access to legal services for couples in transnational relationships. The implementation of online platforms in Indonesia, Ukraine, and Kazakhstan has been an important step toward facilitating and modernizing the marriage process. This measure is particularly relevant against the backdrop of globalization and the growing number of international marriages.²⁹

²⁶ Amira Mashhour, "Islamic Law And Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt," *Human Rights Quarterly* 27, no. 2 (2005): 562–96, <https://doi.org/10.1353/hrq.2005.0022>.

²⁷ Durgeshree Raman, "Enforceability of Mahr under a Shari'a Law-Based Contract in New Zealand: A Comparison with United Kingdom, Australia, and Canada," *International Journal of Law, Policy and the Family* 38, no. 1 (2024): ebae020, <https://doi.org/10.1093/lawfam/ebae020>.

²⁸ Imam Muslih, Nurdin Nurdin, and Marzuki Marzuki, "Effectiveness of Marriage Services through Information System Management (SIMKAH) at Palu City Religious Court," *International Journal of Contemporary Islamic Law and Society* 2, no. 1 (2020): 20–35, <https://doi.org/10.24239/ijcils.Vol2.Iss1.12>.

²⁹ Olena Bogdanek, "Marriage Proposals in Diia: More Than 400 Thousand Proposals Have Been Made in Three Days," *Suspilne Media*, 2024, accessed May 25, 2025, <https://suspilne.media/834605-propozicia-slubu-v-dii-stala-trendom-tizna-fedorov/>; Jasmin Dall'Agnola and Hélène Thibault, "Online Temptations: Divorce and Extramarital Affairs in Kazakhstan," *Religions* 12, no. 8 (2021): 654, <https://doi.org/10.3390/rel12080654>; Dwiyan Achmad Hartanto and Evi Sintia Rahma, "Legal Provisions for Online Marry Legalization in Indonesia," *International Journal of Law, Government and Communication* 9, no. 36 (2024): 53–60, <https://doi.org/10.35631/IJLGC.936004>.

Scholars also identify alternative dispute resolution in family matters in the digital age as a promising area for further inquiry.³⁰ At the level of international law, the European Union has issued Recommendation No. R (98), a specific instrument for regulating family mediation. Its aim is to foster the adoption, dissemination, and harmonization of family mediation practices across European countries.³¹

Successful models of alternative dispute resolution for transnational couples in the United States may be adapted by legal professionals to establish an online dispute resolution system. Such adaptation would involve creating specialized platforms designed to accommodate the distinctive features of international marriages, including differences in legal frameworks, cultural nuances, and language barriers. The involvement of mediators and arbiters with expertise in family law is equally crucial. Moreover, it is important to leverage advanced technologies, such as video conferencing platforms and online document exchange systems. Finally, the development and implementation of collaborative legal mechanisms across jurisdictions can become key components of this system.³² Alternative dispute resolution offers a beneficial option to protracted and costly legal proceedings for resolving immigration matters and family reunification cases.³³ Alternative dispute resolution mechanisms have the potential to become invaluable instruments in addressing international conflicts pertaining to child abduction, the repatriation of minors removed from their habitual residence, child custody, divorce proceedings, and related matters.³⁴

³⁰ Amy J. Schmitz and Leah Wing, “Beneficial and Ethical ODR for Family Issues,” *Family Court Review* 59, no. 2 (2021): 250–67, <https://doi.org/10.1111/fcre.12572>.

³¹ UNHCR, “Recommendation No. R(98)9 Adopted by the Committee of Ministers on January 21, 1998, at the 616th Meeting of the Ministers’ Deputies,” 1998, accessed May 25, 2025, <https://www.refworld.org/ru/legal/resolution/coeministers/1998/ru/139368>.

³² Noam Ebner and Elayne E. Greenberg, “Strengthening Online Dispute Resolution Justice,” *Washington University Journal of Law and Policy* 63 (2020): 65, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/wajlp63&div=6&id=&page=>.

³³ Colby Berman, “Note, Crossing the Border or Crossing the Line? Why Alternative Dispute Resolution Is the Best Route to Reunite Families of Immigrant Children Separated at the US–Mexico Border,” *Cardozo Journal of Conflict Resolution* 21 (2020): 465, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/cardcore21&div=22&id=&page=>.

³⁴ HCCH, “Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction,” 2013, accessed May 25, 2025, <https://assets.hcch.net/docs/e2fb7d3b-65a6-487c-8bc2-a47085862827.pdf>; Melissa A. Kucinski, “The Pitfalls and Possibilities of Using Technology in Mediating Cross-Border Child Custody Cases,” *Journal of Dispute Resolution* 1 (2010): 297, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jdisres2010&div=19&id=&page=>; Nuria González Martín, “International Parental Child Abduction and Mediation: An Overview,” *Family Law Quarterly* 48, no. 2 (2014): 319–50, <https://www.jstor.org/stable/44734358>; Jennifer Zawid, “Practical and Ethical Implications of

Digitalization in the field of alternative dispute resolution allows mediators to streamline legal proceedings in resolving conflicts arising from transnational families and marriages.³⁵

The evolution of family law across nations is converging, as “despite their distinct characteristics, nations worldwide confront analogous dilemmas in delineating and governing the contemporary family”.³⁶ The legal framework governing family matters, both *de jure* and *de facto*, varies depending on the jurisdiction. These regulations frequently require revision due to the absence of consensus on criteria for determining the applicable law. Establishing such criteria serves to uphold the formal and substantive validity of marriage and family relations.³⁷ Correctly interpreting the legal dimensions of transnational marriages enables both parties to identify potential risks and create a more equitable and predictable legal framework for the family.³⁸

To analyze the legal regulation of family relations and cross-border marriages in contemporary states, this study examined international treaties. Specifically, it consulted the 1993 CIS Convention on Mutual Legal Assistance and Relations in Civil, Family, and Criminal Matters and the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children. National legislation (the Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family) was examined to understand the legal framework for international marriages and the

Mediating International Child Abduction Cases: A New Frontier for Mediators,” *The University of Miami Inter-American Law Review* 40 (2008): 1, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/unmialr40&div=5&id=&page=>.

³⁵ Paula Shulman, “Brazil’s Legacy of International Parental Child Abduction: Mediation under the Hague Abduction Convention as a Solution,” *Cardozo Journal of Conflict Resolution* 16 (2014): 237–63, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/cardcore16&div=12&id=&page=>.

³⁶ M. Benedetto, “International Foreign Judgments in Divorce and Custody Cases: A Clash of Legal Cultures,” *The Journal of the DuPage County Bar Association* 25 (2012): 1, <https://www.dcba.org/mpage/vol251012art1>; Katharina Boele-Woelki, “What Comparative Family Law Should Entail,” *Utrecht Law Review* 4, no. 2 (2008): 1–24, <https://doi.org/10.18352/ulr.62>.

³⁷ Lauren Clayton-Helm, “Chapter 10: Marriage and Cohabitation in Private International Law: Regulating De Jure and De Facto Relationships,” in *Research Handbook on International Family Law*, ed. J. M. Carruthers and B. W. M. Lindsay (London, UK: Edward Elgar Publishing, 2024), 172–92, <https://doi.org/10.4337/9781802207422.00016>.

³⁸ Ann Laquer Estin, “Marriage and Divorce Conflicts in International Perspective,” *Duke Journal of Comparative & International Law* 27 (2016): 485, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/djcil27&div=19&id=&page=>.

protection of human rights. The study further draws on research in family law, with a particular focus on its international aspects and law enforcement practice.

The study employs a normative-comparative legal method, conflict-of-laws analysis, and legal modeling. The comparative component draws on the legislation of France, Germany, Greece, Turkey, and Japan, selected on the basis of three criteria: (1) their use of contrasting conflict-of-laws models (*lex loci celebrationis*, *lex personalis*, and mixed approaches); (2) the availability of empirical data on cross-border marriage registration and dissolution; and (3) their relevance to Kazakhstan as a civil law jurisdiction undergoing legislative transformation. Socio-cultural analysis was performed to assess the influence of cultural and religious traditions on the choice of regulatory model, including in jurisdictions where Islamic family law forms part of the applicable legal regime.

The analysis proceeded through several interconnected stages. First, international legal instruments, classified into general multilateral treaties and specialized conflict-of-laws conventions, were examined to establish the normative baseline. Second, a comparative stage assessed the legal regulation of cross-border marriage across the selected jurisdictions. The analysis identified three principal approaches to conflict of laws in family matters: *lex loci celebrationis*, *lex personalis*, and a mixed approach. Third, the legislative framework of Kazakhstan was analyzed against these comparative findings, with attention to the role of digital technologies in marriage registration procedures. Finally, problem-oriented analysis was applied to identify gaps in Kazakhstan's Family Code (specifically, the absence of bilateral conflict-of-laws rules). This stage involved legal modeling to develop a model for their restoration, with particular emphasis on its implications for cross-border Muslim marriages.

Discussion

The body of international legal instruments governing cross-border marriages and family relations is extensive. These instruments can be classified into two main categories: (1) multilateral international agreements of a general nature that cover family law matters, and (2) specific international instruments that directly regulate family relations and cross-border marriages.

The first group includes the Rome Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the International Covenant on Civil and Political Rights, the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Luxembourg, 1980), and the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters within the Commonwealth of Independent States (1993).

The 1980 European Convention underscores the importance of the right to privacy and family life. It provides that the right of men and women of

marriageable age to marry and to found a family is governed by the national legislation regulating the exercise of these rights.³⁹ The International Covenant recognizes that persons of marriageable age have the right to enter into a marriage and to found a family based on their free and informed consent. States parties are obligated to ensure the equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution.⁴⁰ The Minsk Convention addresses family and marriage matters in articles 26-37 (Section III, Part II).⁴¹

A more detailed account of global standards governing family and marriage matters can be found in specialized international legal documents. The legal underpinnings of international family law are established through several conflict-of-law agreements. These include the New York Convention on the Recovery Abroad of Maintenance,⁴² the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages,⁴³ the Hague Conventions on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions,⁴⁴ on Protection of Children and Co-operation in respect of Intercountry Adoption,⁴⁵ on the Recognition of Divorces and Legal Separations,⁴⁶ on Celebration and Recognition of the Validity of Marriages,⁴⁷ on

³⁹ UNHCR, “European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children,” 1980, accessed May 25, 2025, <https://www.refworld.org/ru/legal/multilateral/treaty/coe/1980/ru/135728>.

⁴⁰ UN, “International Covenant on Civil and Political Rights. Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966,” 1966, accessed May 25, 2025, https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.

⁴¹ Adilet, “On Ratification of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. Resolution of the Supreme Council of the Republic of Kazakhstan dated March 31, 1993,” 1993, accessed May 25, 2025, https://adilet.zan.kz/rus/docs/B930005100_.

⁴² UN, “Convention of 1956 on the Recovery Abroad of Maintenance,” 1956, accessed May 25, 2025, https://www.un.org/ru/documents/decl_conv/conventions/alimony.shtml.

⁴³ UN, “Convention of 1962 on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages,” 1962, accessed May 25, 2025, https://www.un.org/ru/documents/decl_conv/conventions/conmarr.shtml.

⁴⁴ Department of Good Deeds, “Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions,” 1996, accessed May 25, 2025, <https://dszn.ru/uploads/magic/ru-RU/Document-0-1751-src-1644329381.3044.pdf>.

⁴⁵ Garant, “Convention of 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption,” 1993, accessed May 25, 2025, <https://base.garant.ru/2556181/>.

⁴⁶ Zona Zakona, “Convention of 1970 on the Recognition of Divorces and Legal Separations,” 1970, accessed May 25, 2025, <https://www.zonazakona.ru/law/abro/546/>.

⁴⁷ Consultant, “Convention of 1978 on Celebration and Recognition of the Validity of Marriages,” 1978, accessed May 25, 2025, <https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=INT&n=3315#Em8wDUUQF9nNakQi1>.

the Law Applicable to Matrimonial Property Regimes,⁴⁸ and other international legal instruments.

These conventions establish standards for determining the applicable law in matters of family law, including marriage and divorce, adoption and child custody, and property disputes. Such international legal agreements generally aim to simplify the legal process and reduce conflicts by establishing uniform standards, such as the application of the “best interests of the child” principle in child custody matters.

An examination of the legal foundations of marriage reveals that the vast majority of countries have adopted the fundamental principles of civil law, which primarily encompasses family law. The development of widely accepted rules and principles helps distinguish between standards, deviations, and exceptions, thereby enabling the identification of areas requiring improvement or reform. National conflict-of-laws rules governing the registration of cross-border marriages can vary substantially. Such divergences stem from the cultural, religious, and historical specificities of a given society. Greek law, for example, requires adherence to traditional wedding rituals and assigns the husband a dominant position within the family. However, other jurisdictions may regard this feature as incompatible with the public policy exception.⁴⁹ Morocco prohibits marriage between individuals of different religions.⁵⁰ In Japan, a widow or widower must observe a six-month mourning period before remarrying, as stipulated in Article 733 of the Civil Code.⁵¹ The literature describes this provision as reflecting “patriarchal ideas from a bygone era, making it an international anomaly”.⁵² In Pakistan, India, Saudi Arabia, and the United Arab Emirates, traditional practices attach significance to the financial standing of the groom. France requires public disclosure of prenuptial agreements when one

⁴⁸ Consultant, “Convention of 1978 on the Law Applicable to Matrimonial Property Regimes,” 1978, accessed May 25, 2025, <https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=INT&n=3314#HrawDUUk bQtjksRT2>.

⁴⁹ I. B. Ilovaisky, *Legal Regulation of Cross-Border Marriages and Family Relations: A Textbook* (Volgograd: Publishing and Printing Center of the Volgograd Institute of Management, 2021); M. Tsitseklis-Souridakis, “Greek Code of Civil Law,” Office of Justice Programs, 1981, accessed May 25, 2025, <https://tinyurl.com/2sazwz2k>.

⁵⁰ WIPO, “Civil Procedure Code (Promulgated by Dahir No. 1-74-447 of 11 Ramadan 1394 (September 28, 1974), and Amended up to Law No. 61-19), Morocco,” 1974, accessed May 25, 2025, <https://www.wipo.int/wipolex/en/legislation/details/19789>.

⁵¹ AsianLII, “Laws of Japan. Civil Code (Part W, Part X) 1896 - Act No. 89 of 1896,” 1896, accessed May 25, 2025, <http://www.asianlii.org/jp/legis/laws/ccwp1896an89o1896287/>.

⁵² N. Shuhei, “In Family Law, Japan Becoming the Land Time Forgot,” *Nippon*, 2023, accessed May 25, 2025, <https://www.nippon.com/ru/in-depth/d00855/>; S. Vagatsuma and T. Ariizumi, *Japanese Civil Law. In Two Books. Translation from Japanese by V. V. Baturenko. Book 2* (Moscow: Progress, 1983).

spouse is a private entrepreneur, thereby ensuring the transparency of the spouses' financial affairs.⁵³ Vietnam prohibits sham marriages and divorces on the grounds that such arrangements "contravene the principle of safeguarding family relations" and pose a threat to national security.⁵⁴

Registering a cross-border marriage generally requires a certificate of no impediment to marriage, confirming the individual's legal capacity to marry. Obtaining, translating, and legalizing the necessary documents entails additional time and financial costs.⁵⁵ In France, partners must provide proof of residence;⁵⁶ Germany mandates notarized birth certificates translated into German.⁵⁷ Turkey demands valid passports, a municipal application, and a notarized certificate translated into Turkish confirming the absence of impediments, including medical examination results.⁵⁸

Analyzing the legal regulation of marriage makes it possible to understand both local and global trends in family law, as well as identify potential problems. In Kazakhstan, marriage and family matters are governed by the Code No. 518-IV on Marriage (Matrimony) and Family⁵⁹ (also referred to as the Code, the CMF, or the Family Code), dated December 26, 2011. Provisions and regulations on guardianship and custody are set out in Chapter 65 of the Civil Code of the Republic of Kazakhstan (Paragraph 9. Article 1124).⁶⁰ To ensure legal certainty and protect the rights of citizens, it is essential to bring the national legislation of Kazakhstan into alignment with international standards.

⁵³ Legifrance, "French Code Civil (Code Civil des Français)," 2024, accessed May 25, 2025, <https://tinyurl.com/339j9sjh>.

⁵⁴ V. R. Atnashev, "Legal Regulation of Marriage Relations with Foreign Citizens (on the Example of Vietnam)," *Eurasian Integration: Economics, Law, Politics* 16, no. 4 (2022): 98–105, <https://doi.org/10.22394/2073-2929-2022-04-98-105>; The National Assembly, "Civil Code of the Republic of Vietnam," 2015, accessed May 25, 2025, <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn079en.pdf>.

⁵⁵ V. R. Atnashev, "Legal Regulation of Marriage Relations with Foreign Citizens (on the Example of Vietnam)," *Eurasian Integration: Economics, Law, Politics* 16, no. 4 (2022): 98–105, <https://doi.org/10.22394/2073-2929-2022-04-98-105>.

⁵⁶ Legifrance, "French Code Civil (Code Civil des Français)," 2024, accessed May 25, 2025, <https://tinyurl.com/339j9sjh>.

⁵⁷ Bundesministerium der Justiz, "Das Deutsche Einführungsgesetz zum Bürgerlichen Gesetzbuche," 1896, accessed May 25, 2025, <https://www.gesetze-im-internet.de/bgbeg/BJNR006049896.html>.

⁵⁸ Turgut Akıntürk and Derya Ateş Karaman, *Borçlar Hukuku: Genel Hükümler Özel Borç İlişkileri* (İstanbul: Beta Basım Yayım Dağıtım, 2013).

⁵⁹ Online Zakon, "Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family, Dated December 26, 2011, No. 518-IV," 2024, accessed May 25, 2025, https://online.zakon.kz/Document/?doc_id=31102748.

⁶⁰ Adilet, "Civil Code of the Republic of Kazakhstan (Special Part) Dated July 1, 1999, No. 409," 2022, accessed May 25, 2025, https://adilet.zan.kz/rus/docs/K990000409_.

In Kazakhstan, the registration of marriages between citizens and foreign nationals has specific features regulated by the Code. The procedure consists of the following stages. First, a set of documents must be provided. Valid passports are required: an identity card for Kazakh citizens and a foreign passport for non-Kazakh citizens. To register a marriage, a certificate of no impediment to marriage must be presented, issued by the consulate of the foreign country in which one spouse is a citizen. The document must be translated into Kazakh or Russian and notarized. In certain cases, duly translated and notarized birth certificates may also be required. Typically, partners complete a special form at a register office (ZAGS). In some instances, the couple may be interviewed to clarify their intentions and confirm the absence of impediments to the marriage. The marriage is officially registered at the local ZAGS, accompanied by a formal ceremony. Accordingly, when one partner is a foreign national, additional time and resources may be needed to obtain necessary documents from the other country.

Kazakhstan leverages digital technologies to streamline and expedite the registration of transnational marriages. Both Kazakh citizens and foreign nationals may apply for a marriage certificate through the unified public service portal, the Electronic Government of the Republic of Kazakhstan (egov.kz). This option facilitates the submission of documents and considerably shortens the duration of the procedure. Kazakh citizens frequently use the capabilities of the electronic government platform for prompt identification and submission of documents. Resources that enable access to information on the necessary documents and requirements are essential to make the process more transparent and understandable for foreign nationals and stateless individuals. In the case of cross-border marriages, digitalization also simplifies the overall process. Specialized agencies of state ministries of foreign affairs may be contacted online, ensuring the availability of public services.

A comprehensive analysis of Kazakhstan's family law reveals that it constitutes a structured framework for regulating domestic family matters at the national level. Nevertheless, given the growing number of transnational marriages and cross-border family disputes, legal challenges associated with determining the applicable law when a conflict of laws arises must be addressed. The conflict of laws should be examined to identify how private international law influences the application of domestic legislation. It is equally important to assess how existing legal mechanisms can be adapted to ensure the protection of all parties involved in international family relationships.

International legal acts provide the foundation for regulating transnational marriages and family matters. However, law enforcement encounters certain challenges, including discrepancies in laws, difficulties in enforcement, and the need to protect the rights of family members. Practice confirms the need for further efforts to harmonize domestic legislation and strengthen international

cooperation to more effectively address legal issues arising from international marriages.

Conflict-of-law rules determine the law applicable to specific legal relations and play a decisive role in various aspects of family law. With respect to marriage, these rules may establish the conditions under which a marriage is considered valid in different countries, including the requirements for entering and registering a marriage. In divorce proceedings involving citizens or residents of different countries, the applicable law must also be determined. When addressing custody and guardianship, particular attention is devoted to identifying which country's laws apply if the parents reside in different states or are subject to different legal systems. Another crucial dimension concerns the legal challenges of resolving property disputes. Determining which laws govern community assets is necessary when the spouses were married in one country but reside in another.

The legal literature identifies three principal approaches to managing the conflict of laws in family and marriage matters.⁶¹ These approaches reflect the differences in legal systems, traditions, and socio-cultural backgrounds across countries. Each approach carries its own advantages, disadvantages, and distinctive features.

Analyzing conflict-of-laws rules in the context of marriage reveals a group of countries that favor the principle of nationality. This principle entails applying the law of the country where the marriage was celebrated (*lex loci celebrationis*). It is reflected in the national laws of many Latin American countries, certain regions of the United States, and the Republic of South Africa, among others. The principal advantage of this approach is its capacity to considerably simplify administrative processes. It reduces the time required to prepare documents and facilitates the integration of different legal systems through international cooperation in family law. The principle of local law ensures consistency in processes related to family relations and cross-border marriages. At the same time, *lex loci celebrationis* enhances the predictability of marriage arrangements for individuals seeking to safeguard their rights in foreign jurisdictions.

Despite its advantages, *lex loci celebrationis* has certain limitations. These include the possibility of circumventing the law by crossing borders, whether between countries or states, and the element of chance in the selection of the applicable legal regime. A further limitation is the risk of a "limping marriage," whereby a marriage may not be recognized as valid due to a conflict of laws between the spouses' countries of citizenship. Moreover, in the context of globalization and the interconnectivity of modern societies, such rules may

⁶¹ Maidan K. Suleimenov, *Private International Law and International Civil Procedure: A Textbook in Two Parts* (Almaty: ZANGER Law Firm, 2018).

create opportunities for violating the rights of individuals in unequal positions, for instance, in relation to same-sex marriage. Accordingly, *lex loci celebrationis* may have both positive and negative implications for the enforcement of family law.

Another group of countries incorporates personal law (*lex personalis/lex domicilii/lex patriae*) into their national family legislation. These jurisdictions typically share similar legal systems, where harmonization of norms and unification of legal sources is feasible. This approach has proven more flexible, adaptable, and better able to take into account the actual circumstances of the parties. It enables a more equitable resolution of disputes based on the laws of the country in which the spouses maintain a common household. Additionally, *lex personalis* generally helps reduce the number of limping marriages. Under personal law, the applicable law is determined by the actual residence of the parties. The law governing their relationship is selected according to the country where the spouses reside at the time the dispute arises. However, this approach presents certain disadvantages in regulating cross-border family relationships. The application of personal law can lead to uncertainty and difficulty in determining the applicable law if the spouses change their residence. Moreover, personal law may not always protect the interests of parties who are more vulnerable in their country of residence.

France, Bulgaria, and several other countries favor integrated or mixed models. These methods combine elements of the two aforementioned approaches and establish a flexible framework that takes into account both the personal affiliations of the parties and their actual circumstances. Mixed approaches allow spouses to select the applicable law and to benefit from individualized regulation. A major advantage of integrated methods is that they contribute to more efficient dispute resolution, which is particularly important given the intricate dynamics of international family relationships. Nonetheless, implementing an integrated approach carries the risk of complicating the resolution process due to the need for meticulous examination of diverse legal systems. Successful implementation of mixed models also requires a high degree of expertise on the part of judges and legal professionals.

The following table systematizes the three principal approaches to conflict-of-laws regulation in cross-border family matters and situates Kazakhstan's legislative position within this typology (Table 1).

Table 1. Conflict-of-Laws Approaches in Cross-Border Marriage Regulation and Kazakhstan's Legislative Position

Approach	Core rule	Advantages	Disadvantages	Kazakhstan's position
Lex loci celebrationis	Law of the place of marriage	Predictability; administrative simplicity	Risk of limping marriages;	Governed form and procedure

			circumvention by crossing borders	under the 1998 Law
Lex personalis	Law of nationality or domicile	Flexibility; reduces limping marriages	Uncertainty if spouses change residence	Governed substantive conditions under the 1998 Law
Mixed approach	Combination of personal law and factual circumstances	Equitable; individualized	Complexity; requires high judicial expertise	Abandoned in the 2011 Family Code; currently only national law applied

Source: compiled by the authors based on a comparative analysis of the national legislation of France, Germany, Greece, Turkey, and Japan, alongside that of Kazakhstan (1998 Marriage and Family Law; 2011 Family Code).

As Table 1 demonstrates, Kazakhstan operated a mixed system under the 1998 Law, applying *lex loci celebrationis* to the form and procedure of marriage and *lex personalis* to its substantive conditions. The enactment of the 2011 Family Code marked a regression from this balanced approach: conflict-of-laws provisions were not incorporated, leaving courts without bilateral rules for determining the applicable law. This places Kazakhstan outside the mainstream of comparative practice, where mixed or personal law approaches predominate precisely because they minimize limping marriages and afford greater protection for the parties.

The legal regulation of family and marriage in Kazakhstan during the period of its independence has evolved through the development and enactment of specific legislation. Under the Law on Marriage and Family Law of December 17, 1998, Kazakhstan adopted a dual approach to the conflict of laws in family and marriage matters. Specifically, both the law of the place where the marriage was celebrated (*lex loci celebrationis*) and the personal law (*lex personalis*) were applied concurrently. *Lex loci celebrationis* governed the form and procedure for entering into a marriage in Kazakhstan. The nationality law of the individuals entering into the marriage (*lex nationalis*), together with the legislation of Kazakhstan, determined the requirements for marriage.

The development of family law in Kazakhstan has drawn strong criticism within the academic community due to the absence of conflict-of-laws provisions in the Family Code. This omission has led to a “gross misinterpretation of family law, rendering the section on international family matters inadequate”.⁶² During the drafting of the Code, rules governing conflict of laws were not incorporated. As a result, a substantial gap exists in the CMF. Two fundamental aspects of marriage remain insufficiently defined from the

⁶² Maidan K. Suleimenov, *Private International Law and International Civil Procedure: A Textbook in Two Parts* (Almaty: ZANGER Law Firm, 2018).

standpoint of international family law: (a) the form and procedure of marriage and (b) the conditions for marriage. This situation considerably complicates the marriage process for individuals of different nationalities and for stateless persons. Another major challenge for the enforcement of family law in Kazakhstan is the absence of bilateral conflict-of-laws clauses. According to the legal literature, the CMF lacks a necessary provision “on public policy that limits the application of foreign marriage and family laws, including in relation to the recognition of legal acts that occurred abroad”.⁶³

The Family Code of the Republic of Kazakhstan has undergone numerous amendments since its enactment. Two chapters and several articles have been removed. Yet the content of the Code continues to diverge from the standards of international family law. As noted, the 1998 Law on Marriage and the Family marked progress in regulating the choice of applicable law by focusing on the law of the place where the marriage is celebrated. Subsequent developments in family law have shown a regressive shift from a mixed system towards the exclusive application of national law. Furthermore, provisions on the invalidity of marriages, dissolution of marriages, and adoption have been removed from the chapter on international family law.

The Family Code does not differentiate between issues related to the form and conditions of marriage for individuals of different nationalities. For courts and human rights practitioners, the lack of provisions on bilateral conflict of laws creates difficulties regarding jurisdiction and the applicable law. Ultimately, the inadequate regulation of private international law within family law undermines the protection of citizens’ rights, diminishing legal guarantees in this crucial area. Ensuring legal clarity and safeguarding citizens’ rights requires that national legislation be harmonized with the standards and regulations of international family law. The historical trajectory of family law in Kazakhstan indicates a notable shift in orientation. With the introduction of the Family Code, the country’s national family law has lost several norms and provisions from international family law, including explicit rules on bilateral conflict of laws. This produces legal uncertainty and impedes the management of international marriage matters.⁶⁴

The substantive and legislative standards of family law across jurisdictions exhibit remarkable diversity. Legislative approaches form the basis for conflicts that arise at the intersection of distinct legal systems. Addressing such conflicts requires comprehensive consideration and regulation of numerous factors,

⁶³ M. V. Meshchanova, “Conflict Regulation of Marriage, Divorce and Recognition of a Marriage as Invalid: Comparative Law Aspects,” *Journal of the Belarusian State University, Law* 3 (2017): 32–40.

⁶⁴ Maidan K. Suleimenov, *Private International Law and International Civil Procedure: A Textbook in Two Parts* (Almaty: ZANGER Law Firm, 2018).

adding a further layer of complexity to the process of arriving at a unified decision. Achieving successful harmonization of legal frameworks demands careful attention to the unique cultural, social, and legal traditions of each nation. The willingness and capacity of states to cooperate on an international scale are equally important.

Implications for Islamic Family Law and Muslim Cross-Border Marriages

The absence of bilateral conflict-of-laws rules in Kazakhstan's Family Code is particularly significant in the context of cross-border marriages involving Islamic family law jurisdictions. Kazakhstan's secular family law does not address three categories of legal relations central to Muslim cross-border marriages: the validity of religiously concluded marriages, the mahr as a matrimonial property obligation, and post-divorce child custody governed by hadana rules. With respect to marriage validity, a nikah concluded in a foreign Islamic law jurisdiction is not governed by any specific conflict-of-laws provision in Kazakhstan's Family Code. In the absence of such a provision, courts must rely on general rules. This creates uncertainty as to whether the formal validity requirements of *lex loci celebrationis* or the substantive conditions of Kazakhstan's national law take precedence. The problem is compounded when a foreign state's law treats a religious ceremony as sufficient for legal validity without civil registration.

The mahr is a mandatory matrimonial payment under Islamic law that functions as a property right of the wife, enforceable upon divorce or the husband's death. The issue falls outside Kazakhstan's matrimonial property framework, which recognizes only community property and contractual prenuptial agreements. The absence of a conflict-of-laws rule governing foreign matrimonial property regimes means that a mahr obligation validly constituted under a foreign Islamic law may not be enforceable before Kazakhstani courts. Comparative experience in common law jurisdictions demonstrates that secular courts face recurring difficulties in determining the legal status of such obligations.⁶⁵

Post-divorce custody presents a further conflict. Islamic law (hadana) allocates custody according to rules that differ from the best-interests-of-the-child standard applied in Kazakhstan. Where parents hold different nationalities and reside in different states, Kazakhstani courts lack a clear framework for determining which law governs. This is a direct consequence of the absence of a bilateral conflict-of-laws rule on the law applicable to custody. A related difficulty concerns the recognition of talaq, a form of unilateral divorce valid under Islamic law in the husband's country of nationality. This procedure may

⁶⁵ Durgeshree Raman, "Enforceability of Mahr under a Shari'a Law-Based Contract in New Zealand: A Comparison with United Kingdom, Australia, and Canada," *International Journal of Law, Policy and the Family* 38, no. 1 (2024): ebae020, <https://doi.org/10.1093/lawfam/ebae020>.

or may not constitute a recognized ground for dissolution under Kazakhstani law. Research on European jurisdictions has documented the divergence in approaches to talaq recognition and identified the need for uniform conflict-of-laws criteria.⁶⁶

These gaps are not merely technical. They directly affect the legal security of Muslim women and children, who are particularly vulnerable to legal uncertainty in cross-border family situations. Restoring bilateral conflict-of-laws rules in Kazakhstan's Family Code would reduce this vulnerability. The reform should include specific provisions on foreign matrimonial property regimes and the recognition of religious marriages, thereby aligning Kazakhstan's legislation with the international standards it has committed to observe.

Conclusion

The study demonstrates that Kazakhstan's Family Code contains a structural gap in its regulation of cross-border marriages. The absence of bilateral conflict-of-laws rules leaves courts without a clear framework for determining the applicable law in international family disputes. As the comparative analysis shows, this gap represents a regression from the mixed approach adopted under the 1998 Marriage and Family Law. This approach combined *lex loci celebrationis* for the form and procedure of marriage with *lex personalis* for its substantive conditions. The current legislation applies only national law, placing Kazakhstan outside the mainstream of comparative practice and generating legal uncertainty for foreign nationals, stateless persons, and parties to cross-border marriages.

The restoration of bilateral conflict-of-laws provisions in Kazakhstan's Family Code is the principal legislative recommendation arising from this study. The conditions for entering into marriage should be determined by the law of the individual's country of citizenship at the time of marriage; registration procedures should follow the law of the country of residence. The treatment of stateless individuals requires particular attention. In line with international practice, the applicable law for such persons should be the law of their country of permanent residence. Additionally, the current provision conditioning the recognition of marriages concluded by foreign nationals in diplomatic missions on their conformity with Kazakhstani legislation conflicts with private international law principles. Under these principles, states are obliged to recognize matrimonial relations validly formed in other jurisdictions. These amendments would align Kazakhstan's legislation with the standards set out in

⁶⁶ Zlatan Meškić et al., "Recognition of Talaq in European States—in Search of a Uniform Approach," *Journal of Private International Law* 19, no. 3 (2023): 420–49, <https://doi.org/10.1080/17441048.2023.2294621>.

the Hague Marriage Convention and reduce the incidence of legal disputes over the validity of cross-border marriages.

The gap in conflict-of-laws regulation is particularly acute in relation to cross-border Muslim marriages. The Family Code of the Republic of Kazakhstan contains no provisions on the recognition of religious marriages, foreign matrimonial property regimes, or post-divorce custody. This absence deprives courts of the legal tools necessary to address institutions such as the mahr, nikah, hadana, and talaq. Introducing bilateral conflict-of-laws rules that account for these institutions would protect the rights of Muslim women and children. This issue is particularly pertinent given the substantial proportion of the Muslim population in the country.

This study contributes to the literature on Islamic family law and private international law. It documents the specific conflicts that arise when a secular conflict-of-laws framework (or its absence) encounters Islamic matrimonial institutions in a Muslim-majority state. The case of Kazakhstan offers a concrete example of how the omission of conflict-of-laws provisions from a national family code generates practical legal difficulties. The problems extend beyond general private international law into the domain of Islamic family law, affecting the recognition and enforceability of rights central to Muslim cross-border marriages.

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All data generated or analyzed during this study are included in this published article.

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