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Overcoming obstacles through hidden nuptial paths: Foreign Muslim purported spouses marrying in Italy

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Abstract

Adopting the viewpoint suggested by Hidden Islam, this article offers a glimpse of some tortuous (partly) concealed nuptial paths followed by foreign Muslim intended spouses (regularly or irregularly) settled in Italy, and ponders whether Muslim spouses are rather ‘invisible’ to or ‘unseen’ by academia and state authorities. Moving away from Orientalist and ‘exceptionalist’ theories, the present essay touches on relevant socio-legal phenomena that remain largely a blind spot in previous publications. Relying upon field-collected data and focusing on the manners in which Muslim alien purported spouses overcome religious and legal obstacles when contracting (shari‘ah-compliant) marriages with civil effects on Italian soil, the proposed analysis discloses legal paradoxes and unveils manifold hidden strategies. Facing a dichotomic implementation of the right to marry, Italian Muslim communities and Muslim majority countries’ diplomatic premises may be impelled to creatively interpret state provisions, Islamic laws and Muslim norms. Strategically manoeuvring across diverse state legal systems and unveiling disguised loopholes; non-European Muslim purported spouses can thus be regarded as validly married in compliance with Italian laws. Additionally, Muslim majority countries’ laws intended to impede inter-religious nuptial unions, as well as domestic European state provisions aimed to tackle polygamous and sham marriages, can be skilfully managed selectively registering a (civil and/or shari‘ah-compliant) nuptial union in diverse legal systems.

Keywords

Europe, Islam, Italy, Marriage, Muslim Majority Countries

Introduction

In May 2014, Hidden Islam was published and few months afterwards this photographic book on Italian Islām was granted the Author Book Award 2014 at the Rencontres d’Arles. Nicoló Degiorgis - the author - spent five years (2009-2013) in bringing to light Islamic worship places hidden in the North-eastern Italian landscape. Concealed temporary makeshift Islamic places of worship were revealed in warehouses, shops, supermarkets, apartments, stadiums, gyms, garages and disco. As elucidated by Parr

(2014: 1), the photographed non-purpose built mosques were “so out of sight” that people could drive past many of these worship places without knowing they existed.

The pertinence of the adjectives ‘invisible’ and ‘hidden’ in describing European Muslims is well known in literature. Already in 2011, Cadé shed light upon French-Maghrebinian Islām hidden in the cinéma Beur and cinéma de Banlieue; with respect to Italy, Caridi (2007) fostered a debate describing “invisible Arabs” both in Arab and Western countries. The extensive empirical investigation I conducted among Italian Muslim communities during the past ten years further confirmed this. Not only Islamic worship centres may be almost invisible to non-Muslim eyes and/or non-Arabic speakers, but also shari’ah-compliant nuptial paths can be similarly concealed.2

The present article considers Degiorgis’ photographic book as a starting point to further “lift the veil”3 on Muslim communities in Italy. Following Césari’s suggestions,4 this essay moves away from Orientalist theories (Said 1977 [2003]) and does not consider Muslims an “exceptional case”.5 Alien Muslim intended spouses are here not mystified or stereotyped, rather the socio-legal conducts of foreign Muslim fiancé/es are investigated in order to disclose legal paradoxes and manifold concealed strategies lying at the cross-roads of shari’ah, Italian provisions, and laws of Muslim majority countries.

The proposed analysis specifically explores the manners in which Muslim foreign purported spouses may overcome religious and legal obstacles

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2 The ethnographic qualitative data discussed in this article were collected as part of a Philosophy Doctorate in Law at the School of Oriental and African Studies, University of London. The thesis In the Shadow of Uniformity: Islamic and Muslim Marriages in Contemporary Europe was completed under the supervision of Professor Werner Menski, Professor Fareda Banda, Professor Lynn Welchman, and examined by Professor Marie-Claire Foblets and Professor Maleiha Malik. An earlier pilot survey in Italy was founded by the National Research Council of Italy (C.N.R.) as a part of a project entitled Radici antiche, identità nuova: matrimonio musulmano in Italia. For details see http://www.cnr.it/sitocnr/ICNCR/Attivita/PromozioneRicerca/IdentitaCulturale_file/GraduatoriaPG_07.html [Accessed 11.02.2015].

3 This expression is borrowed from Degiorgis’ book review published by The Guardian. See O’Hagan (2014). Following the international media coverage and the discussion appeared on The Guardian, a second workbook was published in November 2014: this is aimed to chart the topographic locations of the photographed makeshift places of worship. See Degiorgis (2014b).

4 This scholar highlights that researches on Western Muslims shall avoid the “snare of exceptionism” (Césari 2007).

5 Since the 1990s - see for instance Gellner (1992) - the word ‘exceptionalism’ has been increasingly associated with Muslim states and communities. Despite early critique (e.g. Zubaida 1995; Fuller 1997), the term is currently undergoing a revival of popularity in academia. An increasing number of publications evaluates and discusses to a certain extent ‘Arab’, ‘Islamic’ and/or ‘Muslim’ exceptionalism with specific reference to democracy in Muslim majority countries. See inter alia, Filali-Ansari (2005); Clarke (2006); Allawi (2009); Pasha (2009); Beinin and Vainel (2013); Mabry (2015).
when contracting a marriage with civil effects on Italian soil. Building upon face-to-face semi-structured interviewees, document analysis and observational techniques conducted between 2004 and 2014, tortuous (partly) disguised nuptial paths followed by alien Muslim purported spouses settled in Italy are brought to light.

Italian Islām and unspoken dichotomies

The Introduction of Hidden Islam denounces that “Islam is still not formally recognised by the state”. Parr (2014: 1) continues pinpointing that the right to worship without discrimination is enshrined within the Italian Constitution and Islām is the second largest religion after Catholicism. Nonetheless, according to the famous British photographer “consent to build a new mosques is never granted”, particularly in Northeastern Italian regions, therefore “only eight official mosques exist in the whole country”. As a result, Muslim communities “have accumulated a huge number of makeshift and temporary places of worship” (ibidem).

In fact, an uncounted number of partly invisible Islamic worship places exist in Italy. In 2007, the Italian Chamber of Representatives (Camera dei Deputati 2008: 69) reported 774 Islamic worship centres. Two years later, the research conducted by Allievi and Ethnobarometer (2009: 33) counted 661 non purpose built mosques and 3 purpose built mosques. According to the last edition of the Yearbook of Muslims in Europe, “there are over 700 places of Islamic worship (including prayer houses, Sufi prayer halls, etc.) mostly in the Northern and Central Italy” (Coglievina 2013: 357). The figure is approximate and constantly changing since the registration of a worship place in official records is not compulsory in Italy.

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6 The interviewees were selected combining area sampling, stratified random sampling, accidental sampling and snowball techniques. The same qualitative semi-structured research interview pattern was followed with every informant; the lexicon was properly adjusted to the respondent as well as the language (e.g. the interviews were generally conducted in Italian language, but in some cases it was necessary to use Arabic terminology). The informants could choose to be interviewed anonymously, or using a pseudonym, or to be identified. Personal details and data concerning the national belonging of the parties as well as the interviewed diplomatic personnel are not reported in order to protect the participants given the highly sensitive nature of the released information. For details on the employed interview method, see inter alia Spradley (1979); Mishler (1986); Fontana and Frey (1994, 2000); Rubin and Rubin (1995); Hollway and Jefferson (2000); Sarantakos (2005).

7 The research design for this study was developed relying upon the methodology suggested by the following scholars: Gold (1958); Denzin (1994); Lofland and Lofland (1995); Ringer (1997); Bryman (2001); Weinberg (2002); Berg (2004); Banakar and Travers (2005). The analysed research documents include private nuptial certificates, legal marriage acts, unpublished court proceedings as well as confidential legal, administrative and religious material. The employed observational techniques range from participant to non-participant observations.

8 On this see also Allievi (2003).

9 Nonetheless, local exceptions exist. For instance, in 2013, the commune of Milan created a specific register for religious associations and organisations (Albo delle Associazioni e Organizzazioni Religiose
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Analogously to the right of Islamic worship, the right to marry of alien Muslim partners may be challenged by the Italian legal system. On the one hand, domestic and European black letter laws protect the right to marry and form a family. Article 29(1) of the Italian Constitution recognises the rights of the family as a natural society founded on marriage. The same approach reverberates through the contemporaneous wording of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. Article 12 ECHR indeed stresses the right of men and women of marriageable age to marry and to found a family. Similarly, article 9 of the Charter of Fundamental Rights of the European Union recognises the right to marry and to found a family as granted by domestic laws.

On the other hand, alien Muslim partners may be de facto impeded to contract a civil marriage in Italy. As a result, Italian Muslim communities and Muslim majority countries’ diplomatic premises are impelled to creatively implement religious and state provisions. Overcoming some of these nuptial obstacles implies enacting partly concealed remedies as well as unveiling hidden loopholes in the Italian legal system.

**Marriages with civil effects**

In Italy, the provisions of the Civil Code regulate civilly valid marriages of foreign nationals. In compliance with article 116 of the Italian Civil Code, two requirements are to be satisfied. First of all, the celebration of the marriage shall be preceded by the publication (pubblicazioni) by the vital statistics officer. Secondly, an alien who wishes to contract marriage in Italy shall present to the vital statistics officer (ufficiale di stato civile) a

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11 Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (Rome, 04.11.1950), as amended by Protocols Nos. 11 and 14, in Council of Europe Treaty Series, No. 5, 01.06.2010. This is generally addressed as the European Convention on Human Rights (ECHR) and entered into force on 01.06.2010 in its last amended form.
14 Articles 93-101 and 116(3) Italian Civil Code; articles 50-53, Decree of the President of the Republic No. 396 of 2000. From 01.01.2011, the publication is made online in compliance with Memorandum (circolare) of the Ministry of Interior No. 1, 05.01.2011; Memorandum of the Ministry of Interior No. 13, 21.04.2011; Memorandum of the Ministry of Interior No. 26, 28.10.2011.
declaration of the appropriate authorities of the country s/he is national of, showing that no impediments to the party’s marriage exists. This document is called nulla osta from the Latin expression nihil obstat.

A third requirement for foreign fiancé/es was introduced by article 1(15) of Law No. 94 of 2009. Amending article 116(1) Italian Civil Code, the Law 94/2009 stated that aliens are compelled to present to the vital statistics officer a document attesting their regular presence on Italian soil if they want to marry in Italy. This blanket prohibition to civilly marry for non-European nationals irregularly settled in Italy was eventually repealed in July 2011, when the Italian Constitutional Court declared unconstitutional the amended version of article 116(1) Italian Civil Code.

The actual implementation of these provisions is investigated in the following sections, while also pinpointing the manners in which the right to marry of foreign - predominantly non-European - Muslim intended spouses is challenged on Italian soil.

**Publication and nulla osta**

In compliance with Italian laws, both intended spouses, or a person specially appointed by them for that purpose, are impelled to apply for the publication of matrimony to the vital statistics officer of the commune where one of the fiancé/es resides. If the spouses-to-be wish to marry in an embassy or consulate and one of the purported spouses is an alien resident, the vital statistics officer shall request the competent diplomatic premise to proceed with publication. In case the parties marry abroad before foreign authorities, then publication is not necessary. Alien (Muslim) intended spouses wishing to marry on Italian soil are thus impelled to ‘cause publication to be made’ under article 116(3) Italian Civil Code either when marrying in compliance with Italian laws, or in accordance with the foreign laws of the country they are national of.

The fact that the wedding celebration shall be preceded by the publication by the vital statistics officer is not problematic per se for foreign Muslim

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16 Constitutional Court, 20-25.07.2011 No. 245, Gazzetta Ufficiale 27.07.2011; Memorandum (circolare) of the Ministry of Interior No. 21 of 26.07.2011. See also infra the section entitled ‘Valid permit to stay and hidden loopholes’.
17 On the issues analysed in this paragraph see also Sona (2015).
18 Article 11 of the Decree of the President of the Republic 05.01.1967 No. 200 (1), ‘Disposizioni sulle funzioni e sui poteri consolari’ (1/circ), Gazzetta Ufficiale 19.04.1967 No. 98 SO. See also Legal Decree 03.02.2011 No. 71, ‘Ordinamento e funzioni degli Uffici consolari’, Gazzetta Ufficiale 13.05.2011 No. 110.
19 Article 13(2), Legal Decree No. 71 of 2011.
fiancé/es. Nonetheless, when this nuptial preliminary is combined with the second requirement - the *nulla osta* - alien Muslim purported spouses need to overcome a significant number of legal and religious obstacles in order to marry in Italy. Alien fiancé/es wishing to contract a marriage with civil effects in Italy shall indeed submit a document called *nulla osta* to the vital statistics officer. This certificate or declaration is to be translated into Italian language and notarised. In case the above mentioned document does not comply with Italian laws, or it is not submitted by the foreign fiancé/e, the vital statistics officer is not authorised to proceed with the publication of matrimony and therefore to marry the parties. The spouses and the vital statistics officer who celebrate the marriage without prior publication are indeed punishable by an administrative penalty in compliance with article 134 of the Italian Civil Code.

Non-Italian purported spouses can submit two different types of *nulla osta*: a document attesting that no nuptial impediments exist, or a certificate of legal capacity to marry. In case the foreign fiancé/e is national of a country bound by the Hague Convention relating to the Settlement of the Conflict of the Laws Concerning Marriage, or by the Munich Convention on the Issue of a Certificate of Capacity to Marry, s/he shall submit a “certificate of legal capacity to marry”. Non-European citizens, whose national country is not bound by these international treaties, shall submit a “no nuptial impediment declaration”.

In compliance with article 116(1) Italian Civil Code, the *nulla osta* is to be issued by the diplomatic premises of the foreign fiancé/e and it shall show that no impediments to the marriage exist ‘under the laws to which s/he is subject’. Originally intended as a measure against cross-national polygamous marriages, this Italian provision *de facto* undermines the right to marry of citizens of Muslim majority countries. And problems arise not in case of polygynous nuptial unions - which may in fact be valid in compliance with the laws of some Muslim majority countries - but in case of inter-religious marriages. Muslim majority countries’ legal systems have indeed the tendency to comply with *shari’ah* with respect to nuptial impediments. Accordingly, inter-faiths marriages are limited. The Qur’an

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20 Certificates issued under the ICCS Munich Convention No. 20 are exempted from the notarisation requirement. See infra.

21 In the Italian legal system, the publication is an ‘impediment impediment’ to the celebration of a valid civil marriage.


23 See the International Commission on Civil Status (ICCS), Munich Convention No. 20 of 05.091980; available at http://ciec1.org/Conventions/Conv20Angl.pdf [Accessed 08.11.2014].

24 For an interesting discussion on polygamous unions in Italy, see *inter alia* Campiglio (1990); Di Gaetano (1999); Galoppini (2000).
(2:221; 5:5; 60:10) prescribes that Muslims cannot validly marry idolaters and unbelievers. A Muslim man can validly marry a Muslim, Jewish, or Christian woman; whilst a Muslim woman can marry a Muslim man only. In some situations, Jewish or Christian purported brides can similarly be required or advised to embrace Islām in order to marry a Muslim man. According to a more restrictive interpretation, indeed, a Muslim man cannot validly marry a ‘woman of the Book’ unless they live in a shari‘ah-compliant environment such as a Muslim majority country.

Controversial situations therefore arise when a Muslim or a supposedly Muslim purported spouse wishes to marry a non-Muslim partner on Italian soil. Satisfying the nulla osta preliminary nuptial requirement can be very problematic for a fiancé/e who is a national of Muslim majority country; therefore his/her right to marry in Italy can be denied on the ground of his/her religious belonging. It is also worth mentioning that this limit affects Muslim as well as non-Muslim alien intended spouses. In effect, a national of a Muslim majority country can abandon Islām and embrace another religion and/or become an atheist. Empirical evidence however revealed that the future spouse’s religious belonging tends to be assumed relying upon the fiancé/e’s family name and given name. The diplomatic personnel of Muslim majority countries’ consulates and embassies interviewed in Italy clarified that shari‘ah-compliant nuptial impediments apply in the competent Muslim majority country’s diplomatic premise on European soil when it is declared or it can be inferred that the purported spouse’s parents are Muslim. This assumption is usually made relying upon the fiancé/e’s personal names (patronymic, forename, surname), the (modest) behaviour of the intended spouses and the parties’ dress code.

Inter-religious marriages and effective strategies

In order to overcome the limit to civilly marry in Italy on ground of foreign religious impediments, both the diplomatic premises of Muslim majority countries, and the Italian judicial and administrative authorities have elaborated a number of remedies.

With respect to the former, empirical evidence unveiled that the embassies and consulates of Muslim majority countries may follow three different paths. Some Muslim majority countries’ diplomatic premises refuse to issue the nulla osta (case A); some embassies and consulates of Muslim majority

25 The Qur‘ān refers to Jews and Christians with the expression ahl al-kitāb, which means ‘people of the Book’. A Christian or Jewish bride is thus called kitābiyyah.

26 With respect to the employed research methodology, please see supra footnotes Nos. 5-6.
countries release a negative document (case B) or a conditional certificate (case C) of no nuptial impediments.

In the first scenario (case A), the Muslim majority country national purported spouse is denied the certificate of no nuptial impediments to be submitted to the Italian vital statistics officer in order to civilly marry. The *nulla osta* is thus released only if and when the act of conversion to Islām of the non-Muslim partner - usually the fiancé - is submitted to the diplomatic personnel.\(^{27}\) Further specific requirements may regard the (Italian and foreign) Islamic worship centres and Muslim bodies authorised to release a proper *shahādah* certificate.\(^{28}\) In alternative possible scenarios, the *nulla osta* is issued by the competent diplomatic premise of Muslim majority countries, but this certificate is either negative or conditional. A negative declaration certifies that *shari‘ah*-compliant nuptial impediments do exist with respect to the fiancé/e who is national of a Muslim majority country (case B); as a result, the diplomatic authorisation for an Italian marriage with civil effects is denied.

The competent embassy or consulate can also release the *nulla osta* under some conditions (case C). Examining field-collected conditional certificates of no nuptial impediments released by the diplomatic premises of Muslim majority countries on Italian soil, two patterns were identified. First of all, a consulate or embassy may issue a conditional declaration of no nuptial impediments provided that the party engaged to the national of the Muslim majority country submits a certificate of conversion (case C1). The competent diplomatic premise of a Muslim majority country can thus demand the intended spouse to convert to another religious belief in order to marry. When the groom-to-be is the fiancé of a Muslim woman, he can be required to embrace Islām; when the bride-to-be is the fiancée of a Muslim man, she can be requested to embrace one of the three ‘Religions of the Book’. As second option, the competent diplomatic premise of a Muslim majority country releases the *nulla osta*. This document is however issued under the condition that the Muslim fiancée withdraws her right to register and record her Italian civil marriage with a non-Muslim man in the Muslim majority country she is national of (case C2).

The negative or conditional certificates of no nuptial impediments discussed above (cases B and C) cannot be accepted as a valid *nulla osta* by vital statistics officers. Foreign purported spouses appear thus to be impeded to

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\(^{27}\) For further details on the conversion of non-Muslim fiancé/e see infra.

\(^{28}\) This word comes from the Arabic verb *shahida*, which means ‘to witness, to testify’; *shahādah* can thus be translated as ‘profession of faith’, and it is one of the five pillars of Islām. This word is also used to identify a person’s conversion to Islām. See Sona (2015).
contract a marriage with civil effects in Italy. In fact, the instructions of the Ministry of Interior clarify that any negative or conditional statement regarding the intended spouses’ religious belonging inserted in the certificate issued by the diplomatic premises does not prevent the marriage celebration between the parties.\(^{29}\) The Italian public order is thus violated in three cases: when a *nulla osta* is denied for religious purposes (case A); when a negative certificate of no nuptial impediments is issued on the ground of the religious belonging of the non-Muslim purported spouse (case B); when a clause of conversion of the non-Muslim fiancé/e is inserted as a condition for validity for the released *nulla osta* (case C1). Interestingly, the instructions of the Italian Ministry of Interior do not acknowledge the above-mentioned case C2. As a corollary of this ‘unseen’ nuptial path, no official provision exists in case a conditional *nulla osta* is released under the Muslim fiancée’s withdrawal of the right to register and record her Italian civil marriage with a non-Muslim man.

In cases A, B and C1, the examined approach of the Ministry of Interior is consistent with the position of the Italian judiciary. When the capacity to contract marriage of the non-Italian Muslim purported spouse is made subject to the religious belonging of his/her fiancé/e, then Italian tribunals order the vital statistics officer to proceed with the publication without the alien party’s *nulla osta*.\(^{30}\)

The procedure to implement these nuptial preliminary requirements is very detailed. If the vital statistics officer deems that s/he cannot proceed with the publication, s/he issues a certificate reporting the reasons for the denial. Against the denial, a compliant may be brought before the competent local tribunal. Article 100 Italian Civil Code adds that the judiciary can also be involved in case of reduction or omission of publication. If serious reasons occur, the intended spouses may indeed request a reduction of the publication period or even the omission of publication. According to article

\(^{29}\) Ministero dell’Interno (2011a: 109; 2012: 115-6). Cf. Ministero dell’Interno (2009: 31). The former version of the Instructions of the Ministry of Interior did not address this issue when referring to the *nulla osta* issued by the diplomatic premises of foreign countries.

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100(1) Italian Civil Code, the tribunal, having heard the public prosecutor, may reduce the period required for publications by a decree non susceptible of appeal and issued in chambers. The parties can also apply for the omission of publication giving assurance that their marriage is not prevented by any impediments specified by articles 85-89 Italian Civil Code. The tribunal’s assent to the marriage is not necessary and the vital statistics officer can proceed with the celebration of marriage without the publication only in case of imminent danger of death of one intended spouse, provided that the parties swear that there are no impediments susceptible of dispensation between them (article 101 Italian Civil Code). In the described case scenario, a marriage celebrated without publication is valid even if the spouses falsely declared the imminent danger of death of one future spouse. 31 Although explicitly regulated, this last hypothesis seems a risky choice for alien (Muslim) intended spouses, and following this path is not necessary.

As discussed in the two sections above, in case of alien Muslim intended spouses, the combination of the shari‘ah-compliant limit of inter-religious marriages with the publication and the nulla osta requirements create religious and legal impediments to valid nuptial unions. Nonetheless, diplomatic premises of Muslim majority countries as well as Italian judicial and administrative authorities have elaborated a number of effective strategies to overcome these obstacles. In the examined situations, Muslim intended spouses were perceived and ‘seen’ by the competent state authorities in both Italy and Muslim majority countries, and therefore solutions were elaborated accordingly.

Valid permit to stay and hidden loopholes

As second nuptial preliminary requirement, (Muslim) foreign nationals purported spouses used to be compelled to provide a regular residence permit to the vital statistics officer in order to validly marry with civil effects on Italian soil. Article 1(15) of Law No. 94/2009 amended article 116(1) Italian Civil Code inserting a blanket prohibition to contract a civil marriage for non-European nationals who were irregularly settled in Italy. This rule was implemented from 2009 to 2011, when this provision was declared unconstitutional and was thus eventually repealed. 32

32 See supra the section entitled ‘Marriages with civil effects’. For further details, see Sona (2014: 125-6; 2015). On the issues examined in this section and in the following two sub-sections entitled ‘Conflict of laws and a word of mouth manoeuvre’ and ‘Diplomatic premises and concealed remedies’, see also Sona (2015).
Although the request of the fiancé/es’ valid permit to stay was aimed to tackle bogus marriages contracted to grant a spouse’s visa to the irregularly settled party, the legislator overlooked two loopholes in the Italian legal system. In fact, field-collected data brought to light hidden nuptial paths and temporary partly concealed strategic manoeuvres. An effective escamotage to overcome the legal obstacle of the regular permit to stay of a foreign intended spouse was found in conflict of laws principles. Islamic worship places and diplomatic premises of some Muslim majority countries strategically elaborated additional partly concealed remedies against the Italian discriminatory provision. When a regular permit of residence or domicile was the condition to be part of a civilly valid marriage in Italy, alien Muslim fiancé/es were in effect still able to contract marriage in compliance with some foreign laws and shari‘ah. These two possible alternative nuptial paths were thus followed by purported spouses who were prevented to marry by Italian laws, as analysed in the following two sub-sections.

Conflict of laws and a word of mouth manoeuvre

Non-European national intended spouses irregularly settled in Italy - although impeded to marry in compliance with Italian law from 2009 to 2011 - were entitled to contract marriage according to the laws of European/non-European states and/or Muslim majority countries. These nuptial unions could have been celebrated when both parties were either abroad or on Italian soil. The latter scenario encompasses marriages perfected in foreign diplomatic premises and proxy nuptial unions. These two forms of marriages are indeed valid with civil effects by virtue of the Vienna Convention on Consular Relations and the Italian Civil Code. 33

In order to overcome the legal obstacle of the regular permit to stay, irregularly settled alien Muslim purported spouses elaborated alternative partly hidden strategic manoeuvres. Soon after the enactment of Law No. 24 of 2009, the possibility to marry in another European state characterised by a less demanding immigration provisions became the favourite solution of irregularly settled Muslim purported spouses. Accordingly, the number of marriages contracted in an enclave microstate surrounded by Italy - San Marino - exponentially grew.

33 See respectively, article 5(1F) of the Vienna Convention on Consular Relations (Vienna, 24.04.1963), United Nations Treaty Series, Vol. 596, p. 261; and article 111(2) Italian Civil Code. In compliance with the Legal Decree No. 71 of 2011 (article 16 (1 and 2)), proxy marriages can also be perfected by Italian Consuls provided that the intended spouse is not resident in Italy. See Legal Decree 03.02.2011 No. 71, ‘Ordinamento e funzioni degli Uffici consolari’, Gazzetta Ufficiale 13.05.2011 No. 110.
Empirical investigations clarified that the procedure was straightforward.\textsuperscript{34} San Marinian marriage law requires the intended spouses to satisfy conditions that are very similar to Italian nuptial preliminaries and few differences exist. In San Marino, the purported spouses shall sign a notarial act and four Italian nationals shall witness the wedding celebration; the foreign spouse is however not compelled to submit a valid permit to stay in order to contract a marriage with civil effects. The marriage deed is also automatically transmitted between San Marino and Italy, and the marriage act perfected in one of these two countries is instantly valid in the other one. When registered in the Italian official marriage record, the San Marian nuptial act is not further examined by the Italian administrative authorities;\textsuperscript{35} the potentially irregularly settled status of a non-European fiancé/e is thus completely overlooked. As a consequence, spouses married in San Marino are almost immediately regarded as civilly married also in the Italian legal system.

It is also worth mentioning that the Italian Law No. 94 of 2009 prohibited the marriage celebration of an irregularly settled person; the publication and the registration of the marriage were however not precluded. Accordingly, irregularly settled non-European spouses married in San Marino were thus able to submit an application and obtain a valid permit to stay for matrimonial reasons in Italy. Skilfully manoeuvring across the provisions of two diverse but connected European legal systems, and relying upon private international laws, the legal nuptial obstacles based on the valid permit to stay were overcome. In addition, the irregularly settled spouse’s reunification claim was then legitimised on the ground of the very same marriage that, despite being originally prohibited by Italian laws, was thereafter recognised as valid if celebrated in San Marino.

While remaining invisible to Italian state authorities, the ‘San Marinian loophole’ was soon identified by Muslim fiancé/es and widely employed in order to contract civilly valid marriages. This clever strategy however instigated a spiral of exploitation. Irregularly settled Muslim fiancé/es increasingly took advantage of the examined loophole, and soon San Marino authorities became aware of that process. Accordingly, the number of marriages steadily grew as well as the nuptial fees. Since January 2010, a Delegated Decree increased San Marino’s marriage fees and the wedding

\textsuperscript{34} With respect to the employed research methodology, please see \textit{supra} footnotes Nos. 5-6.

\textsuperscript{35} Articles 38(1) and 39(1) of the Law 06.06.1939 No. 1320, ‘Esecutorietà della Convenzione di amicizia e buon vicinato stipulata in Roma, fra l’Italia e la Repubblica di San Marino il 31 marzo 1939’, in \textit{Gazzetta Ufficiale} 16.09.1939 No. 217.
cost eventually ranged from 300 to 1,000 euros for two non-San-Marinian purported spouses.\footnote{36}

The examined strategic remedy was originally a word of mouth solution. I first discovered this *escamotage* while queuing in corridors of diplomatic premises. Conducting empirical investigation, I was provided the contact details of reliable notaries in San Marino; I was also given suggestions on manners to save money for the overnight stay (i.e. in Italian closer cities such as Rimini) and on the less expensive day to get married (i.e. Thursdays).

Within a short time, this formerly hidden nuptial path became evident. Instructions on the procedure to follow in order to marry in San Marino were increasingly reported on immigration websites and forums.\footnote{37} Some of these nuptial unions were claimed to be actual sham marriages.\footnote{38}

Consequently, a big debate arose between the Italian and San Marinian Ministries of Interior. Between April and October 2011, San Marino’s registrar office halted these marriage celebrations;\footnote{39} and this decision was described as a ‘political solution’ so as not to antagonise Italy.\footnote{40} Serious implications for the two countries’ relations were even foreseen.\footnote{41} San Marinian authorities claimed to have informed the Italian government about the growing number of non-European purported spouses who were getting married in San Marino.\footnote{42} It has been suggested that Italy did not raise this issue, since non-European fiancé/es marrying in San Marino tended to belong to a medium/high migration target; therefore, these irregularly settled persons were not as “irregularly present” in the country as others non-European nationals on a lower income (Bertucci, 2011).

In real terms, it appears that both Italy and San Marino kept a blind eye with respect to this nuptial *escamotage* until these marriages were not as

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\footnote{37} See *inter alia* San Marino press release (2010c; 2011); A.P. (2010); Corriere Immigrazione (2010); Sebastiani (2012).

\footnote{38} See for instance Libertas press release (2011e).

\footnote{39} During spring and summer 2011, I personally attempted to contact the San Marino registrar, but the telephone lines were constantly disconnected.

\footnote{40} See for instance Libertas press release (2011d).

\footnote{41} See *inter alia* San Marino press release (2010a) and Libertas press release (2011a).

‘hidden’ and ‘invisible’ as they used to be. Speculations and critique emerged on both sides and, as a result, alien (Muslim) intended spouses were not able to marry in San Marino for few months. From July 2011, the Italian blanket prohibition to contract a marriage with civil effects for irregularly settled non-European nationals was however repealed, therefore marrying in San Marino was not any longer necessary.

**Diplomatic premises and concealed remedies**

Similarly to irregularly settled alien (Muslim) purported spouses, some diplomatic premises of Muslim majority countries and some Islamic worship places adopted strategic techniques in order to overcome the legal obstacle of the fiancé/e’s regular permit to stay. My empirical investigations disclosed two alternative possible paths, which were implemented to counteract the discriminatory provision of Law No. 24 of 2009.

The first solution was found in *shari‘ah* and entailed the collaboration of diplomatic premises with Islamic scholars. When the regular permit of residence or domicile was a condition to be part of a civilly valid nuptial union in Italy, irregularly settled non-European Muslim fiancé/es were still able to marry in compliance with *shari‘ah*. Foreign Muslim partners were thus contracting Islamic-only and/or Muslim-only marriages.43 These nuptial unions were either privately solemnised or perfected in some European/Italian Islamic worship centres. Although only the *shari‘ah*-compliant marriages perfected in the Rome mosque were supposed to be acknowledged as civilly valid nuptial unions by the diplomatic preemies of Muslim majority countries;44 some consulates and embassies recorded as valid Islamic-only and/or Muslim-only marriages.

The registration of Islamic-only and/or Muslim-only marriages *de facto* acknowledged the legal validity of these *shari‘ah*-compliant nuptial unions in the legal systems of some Muslim majority country. Accordingly, these Islamic-only and/or Muslim-only marriages became potentially recognisable transnational nuptial unions in the Italian legal system. The irregularly settled party was thus able to validly marry, although impeded to do so on Italian soil and according to Italian laws.

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43 An Islamic marriage is a nuptial union solemnised in compliance with the *Qur’an*, the *Sunnah* and other sources of Islamic law that depend upon the parties’ Islamic denomination, *Sunni* madhhab and Shi‘i branch. A Muslim marriage is a *shari‘ah*-compliant marriage that is valid in the eyes of a local Muslim community (*e.g.* a *fāhīmah* marriage) or the laws of a Muslim majority country.

44 The Rome mosque is the seat of the Centro Islamico Culturale d’Italia (C.I.C.I.), the sole Muslim organisation in Italy that has been recognised as a non-profit corporation (*ente morale di culto*). See Decree of the President of the Republic 21.12.1974 No. 712, ‘Riconoscimento della personalità giuridica dell’ente “Centro Islamico culturale d’Italia”’ con sede in Roma Via A. Casella n. 51’, *Gazzetta Ufficiale* 10-11.01.1975 No. 10, p. 1.
The consequences of this strategic technique were thus similar to the ones analysed in the previous sub-section with respect to the marriages perfected in San Marino. The irregularly settled partner was allowed to claim a spouse’s visa on the ground of his/her shari‘ah-compliant marriage, which was valid with civil effects in a foreign country and therefore recognised as a valid transnational nuptial union by the Italian legal system.\footnote{45} This inventive although tortuous solution bypassed the Italian marriage impediment relying upon the nuptial legitimisation with civil effects of an Islamic-only and/or Muslim-only marriage as granted by Muslim majority countries’ diplomatic premises.

The second remedy to overcome the legal obstacle of the fiancé/e’s regular permit to stay was found in the non-implementation of Italian laws. In compliance with the Vienna Convention on Consular Relations, embassies and consulates can act as notary and civil registrar as well as perform certain administrative functions. Foreign diplomatic premises shall satisfy two requirements: they do not interfere in the internal affairs of the receiving state, and they respect the laws and regulations of the host country.\footnote{46}

Accordingly, when the purported spouse’s valid permit to stay was regarded as a condition to validly marry in Italy, the same document was requested by some foreign diplomatic premises in order to release the nulla osta.\footnote{47} Empirical evidence indicated that, from 2009 to 2011, some diplomatic premises of the Muslim majority country national fiancé/e required the valid permit to stay of the intended spouse in case s/he was an alien settled in Italy.\footnote{48} When a national of a Muslim majority country was not able to prove his/her regular stay in Italy, the certificate of no impediments to his/her marriage was not released by the competent foreign diplomatic premise. In these cases, the alien Muslim purported spouse was denied the nulla osta by his/her diplomatic premise not on the ground of the non shari‘ah-compliant religious belonging of his/her fiancé/e (as discussed above) but because irregularly settled on Italian soil.

In order to cope with these situations, some embassies and consulates began to issue the nulla osta requested to civilly marry in the Italian commune notwithstanding the irregular presence on Italian soil of the non-European fiancé/e. In these cases, the diplomatic premises used to discourage the Muslim majority country national spouse-to-be from attempting to marry

\footnote{45} Provided that his/her married partner was a European national or owned a valid permit to stay.
\footnote{46} Articles 5(1F) and 55(1), Vienna Convention on Consular Relations.
\footnote{47} On the nulla osta, see supra the section entitled ‘Marriages with civil effects’.
\footnote{48} With respect to the employed research methodology, please see supra footnotes Nos. 5-6.
with civil effects in Italy. If the purported spouse insisted in requesting the certificate of no nuptial impediments, the *nulla osta* was eventually released provided the fiancé/e hand-wrote and signed (sometimes also with his/her thumbprints) a declaration of non-liability of the embassy or consulate. In July 2008, when inquiring about the consequences of this hidden remedy, the personnel of a Muslim majority country consulate explained that the decision was

left to the [Italian] commune’s good heart. What happens we [diplomatic personnel] do not know. Maybe the commune doesn’t check the fiancé/e’s valid permit. Does the Italian commune turn a blind eye… and forgets to ask for this document? Will the fiancé/e’s submit a forgery? We don’t know. We can’t know. But [our] citizenships (sic) continue to apply for *nulla osta*, therefore…

According to my informants, some Muslim majority countries’ diplomatic premises ignored the manners in which alien Muslim purported spouses would have contracted a valid marriage with civil effects in Italy; nonetheless, they continued to release the *nulla osta* when the parties insisted. Empirical evidence thus unveiled that strategic remedies - aimed to overcome legal obstacles manifestly affecting alien (Muslim) intended spouses - were creatively invented by irregularly settled Muslim fiancé/es. Some of these techniques were perceived and supported by diplomatic premises; others remain unknown and partly invisible also to the competent authorities of Muslim majority countries. A further deeper layer of concealed nuptial paths thus existed, but it has not been unveiled yet.

**Conclusions**

As elucidated by Parr (2014: 2), *Hidden Islam* “provides a fascinating glimpse of hidden world and leaves the conclusions about this project entirely in our own hands”. Although on a more modest scale, this article adopts an analogous viewpoint and pursues a similar goal.

Going beyond black letter laws and investigating the actual interpretation and implementation of legal norms, the proposed analysis offers a glimpse of some tortuous (partly) concealed nuptial paths followed by foreign Muslim intended spouses (regularly or irregularly) settled in Italy. The present article touches on relevant socio-legal phenomena that remain largely a blind spot in previous publications. Whereas the legal implications of a growing Western Islamic presence have been discussed in-depth since the mid 1980s in Northern European countries,\(^{49}\) in Italy an articulated debate on (predominantly migrant) Muslim communities began only during

\(^{49}\) See inter alia Nilesen (1992, 1999).
the 1990s.\textsuperscript{50} At international level, Italian Islâm is investigated in a limited number of comparative publications, whose focus ranges form the situation of Muslim communities (i.a. Open Society Institute 2002a, 2002b; Roggero 2002; Coglievina 2009, 2013) to the legal treatment of Muslim minorities (i.a. Allievi and Castro 2000; Aluffi 2004) with specific attention to integration (i.a. Jasch 2007; Toronto 2008) and mosques’ problems (i.a. Saint-Blancat and Schmidt 2005; Allievi and Ethnobarometer 2009).

Legal issues related to Muslims families settled in Italy are unfortunately a neglected topic, therefore the international academic arena remains almost silent with respect to shari‘ah-compliant ways to tie and untie the marriage knot on Italian soil.\textsuperscript{51} Domestic scholarship scrutinises Islamic and Muslim marriages approaching Italian legal and administrative authorities (e.g. Campiglio 1999, 2008; Mancini 2003, 2006, 2008; Albisetti 2008); nonetheless, fieldwork data are rarely collected and investigated and, as a result, the hiatus between law in the book and law in action grows.\textsuperscript{52} It should be mentioned that, in the last decade, excellent anthropological studies have been published on Muslim women (i.a. Lano 2002; Campani 2004) and female (mostly Moroccan) migrants in Italy (i.a. Salih 2000; 2003; 2008). Adopting a gender perspective, these works are predominantly focused on identity (re)creation processes and experiences of displacements, consequently only tangentially discuss the issues examined here.

The growing interest in trans-national and cross-national migratory patterns linked to marriages was thus not matched by a parallel increase in socio-legal researches in Italy, differently form other European countries.\textsuperscript{53} Relying upon detailed empirical qualitative data, and focusing on the manners in which Muslim alien purported spouses overcome religious and legal obstacles to contract (shari‘ah-compliant) marriages with civil effects on Italian soil, the proposed analysis thus contributes to the national and international debate on Western Muslim communities unveiling manifold hidden strategies enacted by foreign Muslim purported spouses marrying in Italy.

The first part of the article focused on the dichotomies that characterise Italian Muslim communities. The right to worship and to marry are enshrined in domestic and international black letter laws; nonetheless, the actual implementation of these rights might be challenging for alien Muslim

\textsuperscript{50} Amongst earlier publications see Musselli (1992).
\textsuperscript{51} For instance, the recently published essay collection edited by Giunchi (2013) focuses on Muslim family law in Western courts, however the Italian socio-legal scenario is not investigated.
\textsuperscript{52} I am here echoing Pound’s vocabulary (1910).
\textsuperscript{53} As far as the UK is concerned, see for instance Williams (2010) and Wray (2011).
purported spouses. As a result, Italian Muslim communities and Muslim majority countries’ diplomatic premises may be compelled to creatively interpret religious and state provisions. As disclosed by the conducted ethnographic investigations, nuptial obstacles are overcome either unveiling concealed loopholes, or skilfully manoeuvring across diverse state legal systems and religious provisions.

The second part of this paper addressed two prerequisites that (Muslim) foreign fiancé/es need to satisfy in order to validly marry with civil effects on Italian soil: the publication and the *nulla osta*. It was thus revealed that, although originally aimed as a measure against cross-national polygamous marriages, the request of a certificate of no nuptial impediments *de facto* undermines the right to marry of nationals of Muslim majority countries. In particular, in Italy, the capacity to contract a civil marriage of a (non) Muslim fiancé/e can be limited by *shari'ah* and can be denied because of the intended spouses’ religious belonging.

It is however possible to overcome the limit to civilly marry on ground of foreign religious impediments. Italian judicial and administrative authorities elaborated a number of remedies intended to facilitate inter-faith marriages of foreign Muslim fiancé/es. Embassies and consulates of Muslim majority countries, on the other hand, may impede inter-religious civil nuptial union of (supposedly) Muslim foreign national parties. This happens when the *nulla osta* is not issued, or when a negative or conditional certificate of no nuptial impediments is released. In these cases, the combination of the *shari'ah*-compliant limit of inter-faiths marriages with the publication and *nulla osta* requirements create religious and legal impediments to valid nuptial unions. Foreign Muslim purported spouses can nonetheless decide to follow the path of a civil-only marriage, which might not to be recognised and recorded as a valid nuptial union - and thus remain invisible - in a Muslim majority country.

The third part of the present article brought into focus a blanket prohibition to contract a marriage with civil effects for irregularly settled non-European (Muslim) intended spouses. Although declared unconstitutional and eventually repealed in 2011, twofold reasons supported the analysis of this provision. First of all, in the aftermath of Law No. 94 of 2009, irregularly settled alien Muslim partners as well as the diplomatic premises of Muslim majority countries developed and implemented a number of clever effective strategies to overcome this nuptial impediment. Secondly, the Italian discriminatory norm leads to a paradox. Originally aimed to tackle marriages of convenience contracted to grant a spouse’s visa to the irregularly settled fiancé/e, the prohibition to marry for irregularly settled
partners *de facto* fostered the process of unveiling legal loopholes and developing creative manoeuvres. As a result, irregularly settled spouses were eventually able to claim an entry clearance for family reasons on the ground of the very same marriage that was originally prohibited by Italian laws, but thereafter ‘seen’ and recognised as a transnational valid nuptial union.

The discussion disclosed a number of alternative (partly) concealed strategies. In order to overcome the legal obstacle of the regular permit to stay, irregularly settled alien Muslim purported spouses began to skilfully manoeuvring across the provisions of two diverse but connected European legal systems. Marrying in an enclave microstate surrounded by Italy, and relying upon private international laws, Muslim foreign intended spouses identified a loophole in the Italian legal system and followed a relatively invisible nuptial path to contact a civilly valid marriage when impeded to do so by Italian laws.

Diplomatic premises of Muslim majority countries and Islamic worship places were similarly resourceful in developing strategic techniques intended to overcome the legal obstacle of the foreign fiancé/e’s regular permit to stay. An effective remedy was found by some consulates and embassies of Muslim majority countries in recording as valid Islamic-only and/or Muslim-only marriages. These formerly legally invisible *shariʿah*-compliant nuptial unions were thus regarded as valid marriages in the legal systems of some Muslim majority country. By virtue of conflict of laws principles, the above-mentioned marriages were then ‘seen’ and acknowledged as valid nuptial unions with civil effects also on Italian soil. As additional remedy, some diplomatic premises of Muslim majority countries released the *nulla osta* to irregularly settled Muslim purported spouses when the party insisted. The manners in which these irregularly settled non-European Muslim intended spouses contracted a valid marriage with civil effects in Italy remain however unknown. This indicates that a deeper layer of invisible nuptial paths exists; but it was not disclosed also to the competent authorities of Muslim majority countries.

It can thus be inferred that, when on Italian soil, foreign Muslim purported spouses may creatively overcome legal and religious nuptial impediments following marriage paths, which can be skilfully concealed to the legal systems of Muslim majority countries and/or European states. Although both academia and state authorities currently overlook these nuptial strategies, the implications are abundant. First of all, the fact that Italian state authorities ignore the existence of loopholes implies fallacious legislation and contradictions. As discussed above, legal provisions aimed
to tackle cross-national polygamy *de facto* affect the right to marry of nationals of Muslim majority countries. Accordingly, Italian judicial and administrative authorities were impelled to elaborate legal remedies not to violate national and international laws. Similarly, a legal amendment enacted to prevent sham marriages *de facto* fostered manoeuvring techniques across diverse European and non-European legal systems. As a result, (*shariʿah*-compliant) nuptial unions originally prohibited on Italian soil were soon recognised by virtue of private international laws principles.

Secondly, the Orientalist and exceptionalist divide between ‘West/Europe’ and ‘Islamic/Muslim’ cannot be applied to European Muslim family issues. As clarified, on Italian soil, marriages are found at the crossroads of *shariʿah*, Italian and European provisions, and laws of Muslim majority countries. Accordingly, a more complex scenario is to be painted. In particular, various marriage options coexist. As revealed by field-collected data, alien Muslim spouses may indeed choose to be part of a non-*shariʿah*-compliant inter-faith marriage; or they can opt for a civil-only marriage; or they may be part of a Muslim-only and/or Islamic-only marriage; or they can avoid registering an Islamic/Muslim/civil nuptial union in their own Muslim majority country of origin. This socio-legal conduct might stem from personal considerations or be compelled by the diplomatic premises of a Muslim majority country.

Although invisible at first sight, multiple intertwined alternative paths coexist in the legal arena in which at least three competing legal cultures are to be identified: European legal systems, Muslim majority countries’ legal systems and Islamic/Muslim traditions. With respect to hidden marriages, foreign Muslim purported spouses marrying in Italy are proven to be resourceful in overcoming religious and legal obstacles to valid nuptial unions through the identification of disguised loopholes and strategically manoeuvring across various legal systems and traditions. The key issue remains whether the ‘hidden’ socio-legal conducts of Muslim purported spouses in Europe - and specifically in Italy - are rather ‘invisible’ to or ‘unseen’ by academia as well as state authorities.

**References**


Overcoming obstacles through hidden nuptial paths, Sona


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