

More light in the shadows:
researchers are studying
migrant communities
in Germany in an effort to
fathom the rules and
norms they live by.

ON THE FRINGES OF THE RULE OF LAW

TEXT: JEANNETTE GODDAR

In Germany's diverse society, law and order are not just overseen by the police and the courts. There are communities that have their own means of settling disputes: family clans with foreign roots, for instance, but also motorcycle gangs and so-called *Reichsbürger* (Reich citizens), who turn their back on the modern German state and long for a return of the days of empire. Hatem Elliesie of the Max Planck Institute for Social Anthropology in Halle and Clara Rigoni of the Max Planck Institute for the Study of Crime, Security, and Law are studying this phenomenon.

Back when he was working on his PhD, Elliesie embarked on an unusual journey in his investigation of the underpinnings of the law. As a lawyer as well as a scholar in the fields of Islamic and African studies, he traveled through a number of countries in the Horn of Africa, sometimes on foot. His aim was to find the treaty under which Italy declared modern Ethiopia

a protectorate in 1889. The Italian version is well known. Elliesie was instead interested in the Amharic version of the document drafts. In discussions conducted in Amharic and Tigrinya over many cups of tea, the native Swabian finally hit pay dirt – and was able to demonstrate that key passages in the Amharic edition were worded completely differently than those in the Italian version on which Italy had relied.

That was a long time ago. However, it shows just how a lawyer with a PhD in Semitic studies found himself right at home at the Max Planck Institute for Social Anthropology in Halle surrounded by field researchers in the area of sociology. Since 2018, Elliesie has been leading a research group there under Marie-Claire Foblets, Director of the Department of Law and Anthropology, that is examining German law from a number of angles. It set up a project called “Conflict reg-

ulation in Germany's plural society” with the aim of asking German civil servants about how people in immigrant communities resolve their problems and disputes: do they contact their nearest police station or go to court? Or do they instead appeal to councils of elders, heads of families, Islamic Hakam (justices of the peace), or even clan bosses?

Search for victims and witnesses

This phenomenon goes by a snappy name in the news: parallel justice. Why so controversial? The first objection is obvious: justice is exercised by the state, which, by its very nature, expects the term to apply only to its institutions. The second is more complex: “‘Parallel’ would imply that people go about their lives in completely separate worlds,” explains Elliesie.

—>



Clara Rigoni, Senior Researcher at the Max Planck Institute for the Study of Crime, Security, and Law, has spent more than ten years studying the relationship between immigrant communities and governmental authorities.

“But this happens only very rarely.” Instead, he says, people decide on who to turn to on a case-by-case basis depending on what they want to achieve. Some dispute situations are also often split up into judicial and extra-judicial elements. “This is simply another type of so-called ‘forum shopping,’” says Elliesie. “It’s really not all that unusual. Most of our everyday disputes are settled informally.”

That view stands in direct contrast to a book that was the impetus for the research project. Its name is “Richter ohne Gesetz. Islamische Paralleljustiz gefährdet unseren Rechtsstaat” (“Judges Outside the Law: Islamic Parallel Justice is Threatening the Rule of Law in Germany”), written by Joachim Wagner, the long-time anchor of the NDR news show Panorama. A little more than ten years ago, the journalist and lawyer set out to interview judges, public prosecutors, and social workers, as well as Islamic organizations and Hakam. He paints a bleak picture: there are social

settings in Germany that operate exclusively according to their own laws. Wagner claims that German judicial authorities have essentially capitulated to parallel justice, particularly Islamic variety. The book served as a wake-up call to the maximum effect: state governments all across the country commissioned studies. The German Judicial Academy and the State of Bremen created a continuing education course called “Recht ohne Gesetz, Justiz ohne Richter – Die Welt der ‘Schattenjustiz’” (“Law without statutes, judiciary without judges – The world of ‘shadow justice’”). Even Germany’s largest state, North Rhine-Westphalia, got involved. In 2019, Mathias Rohe, a professor at Friedrich-Alexander-Universität Erlangen-Nürnberg who has spearheaded research in the translation of Islamic law into present-day Germany, was tasked with writing an expert opinion on family law. Moreover, the Max Planck Institute for Social Anthropology was asked to conduct a study on areas with relevance to criminal law. The latter was undertaken by

Hatem Elliesie in collaboration with Clara Rigoni, a senior researcher at the Max Planck Institute for the Study of Crime, Security, and Law in Freiburg. For more than ten years, Rigoni has been studying the relationship between immigrant communities and governmental authorities in European countries. Together, Rigoni and Elliesie looked at what employees in the judicial administration and prosecutor’s offices know about the phenomenon of “parallel justice”, how they assess it, and how they deal with it.

It’s a delicate matter when a government commissions research: just how unbiased will it be? “We were given contacts and access to records of witness examinations and court files. North Rhine-Westphalia had no influence on the results,” says Elliesie. In collaboration with the Ministry of Justice and supported by the Ministry of the Interior – so the official wording – the Max Planck researchers conducted 40 interviews with judges, prosecutors, and investigators, reviewed more than 60 written questionnaires, and examined numerous court files. One key question interested them: were there cases where victims or witnesses refused to give any statement at all – or suddenly stopped cooperating at trial? “That is normally evidence of a settlement taking place outside the German judicial system,” explains Rigoni. Follow-up questions included: What reasons played a role? Was the family involved? Were there indications of organized crime? Was money at stake? Extortion, intimidation, bribery?

Biker gangs and Reichsbürger, too

The discussions brought some surprising things to light: not many employees in the judicial administration and prosecutor’s offices had confronted such situations. “Although we wrote to a lot of people, we didn’t get many replies,” says Rigoni. Even assuming that public prosecutors and judges are

sidestepped at times when disputes are settled out of court, there was no evidence that the practice is widespread. The cases that were reported involved very different groups, many more than those described by Joachim Wagner: for example, motorcycle gangs, such as the Hells Angels or the Banditos, or self-appointed *Reichsbürger*.

Lots of money at stake, pressure, or violence

Where the research group found evidence of and stories about out-of-court dispute resolution, they discovered that all of them had in common a “strongly felt sense of solidarity and loyalty obligations”. There were three relevant contexts: first, groups char-

acterized by family ties (often extended families); second, groups whose members feel closely bound by a shared national identity, including some immigrant communities and also, for example, *Reichsbürger*; and third, people who pursue common interests, such as motorcycle gangs.

And Islam? “In criminal law, religion plays hardly any role,” says Rigoni. “We didn’t hear of any group that exists solely because all of the members are Muslims.” Even in cases in which Islam-aligned Hakam, i.e. the justices of the peace, were called upon, they mostly applied traditional rules from the country of origin. Rigoni points out that there are also Hakam who are paid for their work. But it is also true, she says, that the aim of “reconciliation”, which sounds so peaceful, isn’t always the best possible solution for

all parties: “There can be a lot of money at stake, psychological pressure, physical violence, intimidation,” says Rigoni.

In family law, by contrast, Mathias Rohe found social settings among the Muslim population where “religious beliefs are adhered to, especially in the area of marriage and divorce.” But when examined more closely, here as well, the main focus is not on religion. Rather, as he states in his expert opinion, “mechanisms anchored in socio-cultural values” are employed. What does that mean? “Legal conceptions are based on three pillars,” explains Elliesie. “On Islamic law – or on what people consider it to be – on customary law, and on German state law.” Where these three areas collide, he says the following can normally be seen: “When a dispute arises between

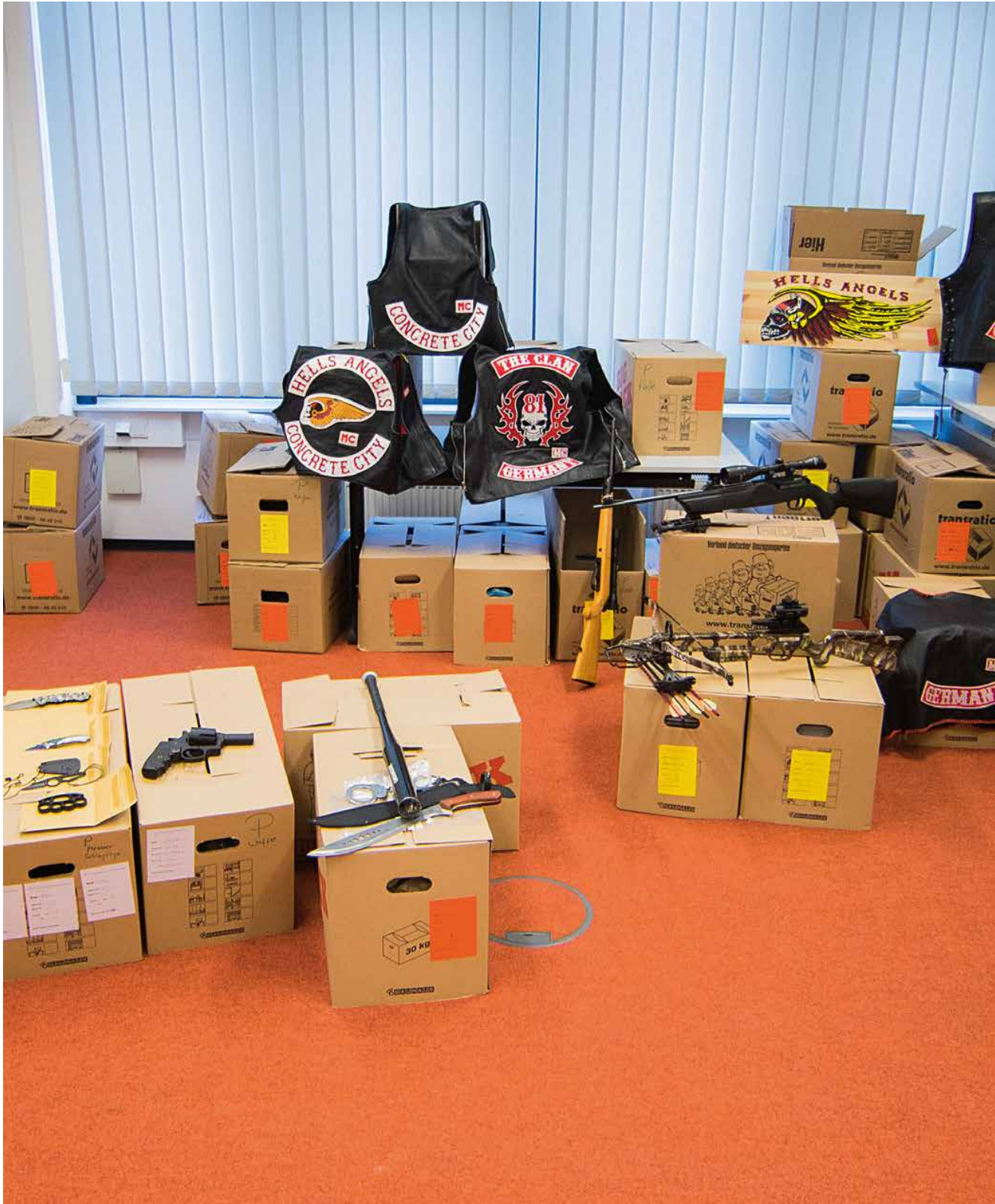


Hatem Elliesie, a lawyer as well as a scholar in the fields of Islamic and African studies, leads a group at the Max Planck Institute for Social Anthropology that is studying dispute resolution in Germany’s plural society.



PHOTO: MPI FOR SOCIAL ANTHROPOLOGY, CARLO DIESTERBECK

Outside the law: some branches of the Hells Angels motorcycle gang are frequently targeted by investigators. The accusations range from weapons possession to extortion and drug dealing, even murder. During a sweeping police raid in 2017, the North Rhine-Westphalia State Criminal Investigation Department seized leather jackets and weapons of a group called Clan 81 Germany.



64

PHOTO: PICTURE ALLIANCE / DPA | ROLF VENNENBERG

the Imam's recommendation and what the heads of the families believe, the traditional conception of the law almost always prevails," he reports. The upshot: disputes are resolved in accordance with traditional values as understood in the communities and not by relying on the classical understanding of Sharia.

No right to work legally

Two PhD students and three postdocs are conducting research, expected to be concluded at the end of the year, on the norms and values that people live by in Germany's plural society. They are studying communities composed of people of Syrian, Chechen, Yazidi, and Afghan origin, as well as groups affiliated with the Mhallami, better known as Lebanese Kurds. They include the kinds of extended family associations called "clans", particularly in the area of organized crime. When Elliesie talks about them, he sheds light on the background of a life that is lived, at least in part, in self-created structures: "The Arabic-speaking Mhallami come from the region around Mardin in the south of Turkey", he explains. "In the 20th century, many of them emigrated to Lebanon. They weren't accepted there as citizens or given access to education." In the 1970s, to escape the Lebanese civil war, many Mhallami fled to Germany where history repeated itself in some respects: "Here as well, they remained marginalized. For decades, they were tolerated in terms of residency law, but they didn't have the right to pursue lawful work."

And how are the young researchers received in the communities that don't always have the best relationship with German authorities? "Amazingly well," says Elliesie. "If anonymity and data protection are safeguarded, people are very willing to describe their own views." Unfortunately, however, a lot of that may have to do with the choice of researchers: all five, who spent a year living among the commu-

nities examined, speak both German and the language of their community on account of their own origin. They know the social and cultural codes, meaning they can speak with community members on equal terms and at the same time also read their non-verbal communication. To this extent, the research project also tells a story about the growing – and necessary – diversity in science. Despite the often patriarchal structures that the researchers need to navigate, gender apparently does not play a role: Elliesie reports that one of the female researchers was even permitted to attend a meeting of the council of elders: "These meetings essentially resemble the proceedings before a German court. The council of elders relies on case files to decide on matters involving the community." The researchers are reluctant to make judgments. "We know hardly anything about how people structure their lives in this country. Just describing the situation is an enormously difficult task," says Elliesie. The findings are to be published in a joint book next year.

Cultural competence is needed

Elliesie and Rigoni presented their study – "Paralleljustiz in Nordrhein-Westfalen aus strafrechtlicher Sicht" ("Parallel Justice in North Rhine-Westphalia from a criminal law perspective") – in Düsseldorf last March. The study ends with a series of recommended actions whose aim is two-pronged: "On the one hand, the proposals are intended to facilitate the work of the judicial authorities and the police. On the other, they can help to give people unrestricted access to government agencies where this is lacking," explains Rigoni. The researchers recommend that evidence be collected at an early stage, for example, through videotaped witness examinations by the police that can later be admitted in court, but also that programs be set up to protect witnesses and victims, as well as those who have broken ties with the com-

munity. However, these steps would have to be tailored to fit the people as well as the cases, says Rigoni: "Where family disputes are involved, the approach is much different than with organized crime outside of blood relationships." They also urge that judicial authorities and the police be given greater advanced training while also making the communities concerned more familiar with German law.

The recommendations can be broken down into a simple formula: in a society where people with many different backgrounds live side by side, there needs to be a willingness not only to get acquainted with one another but also to learn to understand one another. "That can't happen without cultural competence," says Rigoni. As Elliesie puts it succinctly, "Communication is everything." ←

65

SUMMARY

The kind of "Islamic parallel justice" often portrayed in the media does not exist in an institutionalized form.

Out-of-court dispute resolution occurs in some extended families and in certain groups bound by national identity or shared interests.

Traditional rules determine how the law is understood; disputes are sometimes resolved by resorting to violence, psychological pressure, or money.

The researchers recommend more educational outreach directed at immigrants on legal topics as well as programs to protect witnesses and victims and better advanced training for police and judicial authorities.
