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## FRANCO- ALGERIAN MARRIAGE

The comparison of the positive laws between France and Algeria in matters of marriage is a common case of international law: if in both countries marriage is one of the most important acts of life, the legal foundations that frame this union are very different. While in the first country the marriage is civil, it's of religious inspiration in the second. Thus, the prerequisites, the consequences, the dissolution as well as the consequences of the dissolution of this major legal act are fundamentally remote.

Since May 2006, the numerous marriages contracted between Algerians and French allowed to develop a complete jurisprudence on this point of international law. From the French point of view as Algerian, marriage represents an act of the most solemn life. It is even rather subtly defined in Algerian law; according to Art 4 of 2005 family code, "Marriage is a consensual contract between a man and a woman in legal forms. One of its goals is to build a family based on affection, leniency and caring, to morally protect both spouses and to maintain family ties."

First discrepancy, this solemnity can be only civil in France (before the mayor or one of his deputies), while in Algeria, the marriage is divided into religious and civil marriage, although the reform of 2005 tends to institutionalize marriage by involving the Public Prosecutor in the legal acts.

This contribution could be broken down according to the country of residence of the concerned person by distinguishing several situations:

- . The case of an Algerian marrying in Algeria with a French woman.
- . The case of an Algerian woman marrying in Algeria with a Frenchman.
- . The case of an Algerian getting married in France with a French woman.
- . The case of an Algerian woman getting married in France with a Frenchman.

Given the migratory data, Algerian (man or woman) coming to France to marry a French (man or woman), the opposite remaining part congruent. It is possible; however, that marriage will occur in Algeria, which will have repercussions in terms of private international law through the law which governs the celebration place (lex loci celebrationis) or the law of the concerned person's personal status. In French private international law, Art 3 al.3 of the Civil Code, a conflict of laws rule originally intended to govern the situation of a State nationals, but made applicable to foreign situations by case law, will be applied in a distributive manner, to each spouse, that is to say that each one remains subject to the internal law provisions concerning the persons statutes. Although it is very often the Lex Fori (the law of the judge seized) which will determine the consequences of marriage and divorce (unilateralism), in this case the Algerian law, which leaves to the regulatory power the question of bi-national marriages.

### THE CONSTRUCTION AND THE CONSOLIDATION OF THE FRANCO-ALGERIAN MARITAL UNION

By comparing "the premises" of marriage and its celebration, it will be necessary to take the measure of the differences and difficulties, not nullifying but often heavy, to overcome for the marital union can be achieved, art 2 of the Algerian family code stipulates that "The family is made up of people united by the bonds of marriage and kinship";

Art 3 introduces an ethnologically interesting social dimension: *"The family is based in its way of life on unity, solidarity, good understanding, healthy education, good morals and kinship ties"*.

#### THE BEGINNINGS OF THE FRANCO-ALGERIAN MARRIAGES

The study of the beginnings of marriage will deal thematically with the conditions relating to religion, those of consent and age, engagement, other social considerations and public order:

#### THE CONDITIONS OF RELIGION

In France, religious marriage has no legal value since 1791, religion doesn't matter into the conditions relating to the future spouses, so marriage can be celebrated regardless of the wife or husband's religion. So that it concerns only a marriage taking place on the Algerian territory.

In Algeria, confessional cohesion may be required by the family, the 2005 reform has altered the approach somewhat: now, Muslim women marrying non-Muslims are considered as temporarily prohibited, pending the conversion to Islam of their spouse. When this cohesion doesn't exist, the marriage candidate must convert to the religion of the other. This article deals only with conversion to Islam, because it is a requirement in the vast majority of cases. Practically in Algeria, conversion to Islam is essential. The actual conversion obeys a very simple process for which there is no method to follow, as is the case, the best solution for this is actually to contact an Islamic center or organization or a mosque, to obtain a minimum of information about Islam and its precepts. To become a Muslim, it suffices to pronounce the Shahddah, the attestation of faith: "*أشهد أن لا اله إلا الله وأن محمدا عبده ورسوله*" *"I certify that there is no other divinity as God, and I testify that Mohammad is the Messenger of Allah"*. There follow various professions of faith. It is strongly recommended to obtain a document attesting the "re-conversion" with the Imam of the nearest locality. Christian marriages (Catholic, Protestant, Orthodox), to retain only the religions most practiced in France, are almost impossible from the Algerian point of view, very strongly marked by Islam that excludes any mix.

Conversely, the conversion of a Muslim to another religion will rank him as an apostasy, with all the consequences that will entail from the legal point of view (civil law), his family, his entourage, his friends..Etc.

#### II- CONDITIONS OF CONSENT AND AGE

Act of love but also of faith, in some cases, social act, because of the integration of the promised in the other's family and community, the consent is in principle free: "There is no marriage if there is no consent" (art 146 French civil code), with temperaments, relating to marriages arranged in some traditionalist nostalgic families. It should be remembered that alienation clauses to matrimonial law are contrary to public order (Art 6 French Civil Code), but the traditions sometimes remain alive, if both future spouses don't oppose it they can contract a union dictated by the family weal. All that matters, on the occasion of the marriage celebration, each one expresses his "free" consent to the marriage before the mayor or one of his deputies.

The rule in French law *«man and woman can not contract marriage before eighteen years.. Nevertheless, it is open to the public prosecutor of the marriage celebration place, to grant age exemptions for serious reasons"*. There follows a temperament in Art 148: *"Minors can not marry without the consent of their father and mother; in the event of disagreement between father and mother, this division entails consent"*, the reticence of the girl or the young man parents to see them expatriate in a foreign country such as Algeria, in ignorance of the reception which will be reserved to them, seems legitimate.

In Algeria marriages decided by ascendants or the family more generally are much more frequent, although the consent must in principle be free but "accompanied": "The marriage is contracted by the consent of the future spouses, the presence of the marital guardian (Al Wali - initially the matrimonial guardian or "prefect", depending on the context) and two witnesses, as well as the constitution of a dowry" (family code, art.9), since the 2005 Ordinance, Al Wali can be "any person" of the choice of the contender - failing that, Al Wali will be the judge- can not however "prevent the person placed under his tutelage to enter into marriage if there is

opposition, the judge may authorize the marriage, subject to Art 9 of this law (consent of both spouses)", Art 12 of the Family Code: the notion "profit" seems quite honourable in the interest of the woman; but, in Algeria, it is a question of forging family alliances that form socially a tightly knit fabric with tribal origins. In the same contradictory spirit of consenting to two or three, "it is forbidden for Al Wali whether father or otherwise, to compel the minor's marriage under his guardianship. just as he can not marry her without her consent" (art. 13), the consent will be given later, with the agreement of the Algerian father, or his guardian.

This is very far from the French principle of equality which, certainly, is not fully applied, especially in the professional environment. In matrimonial matters, it is the full equality of the spouses; we must not forget that the French woman is protected by her personal status (holding a nationality conferred by the State which ensures the protection of its nationals within its borders and abroad) because the Algerian family code is only meant to regulate relations between Algerians (Art 31, 2005). The Algerian woman is almost considered a major incompetent (*Quran: Surat Al Nisaa, civil law*), which contradicts the regime proclaimed by free consent of wife.

As regards the age-related conditions, these are hardly more severe in Algerian civil marriages: Art 7, 2005 aligned the marriageable age of men and women to 19 years. However, "The judge may grant an exemption from age for a reason of interest or when necessary, when the aptitude to marriage is established. The minor spouse acquires the capacity to sue in court, as to rights and obligations arising from the marriage contract".

For a French woman, to marry an Algerian is, in principle, to marry Islam, although many "Westernized" Algerians, living in France, are not very interested if not on the principles at least on the practice of the religion (disrespect of the five daily prayers, fasting, consumption of alcoholic beverages, of non-religiously sacred meat, even of pork ... As for mixed marriages), the Algerian family code is content to refer the question to the regulatory power: art. 31, 2005 "The marriage of Algerians with foreigners of both sexes is governed by regulations". For foreigners, it is issued by Al Wali, when only one of spouses is a resident; this authorization requires the opinion of the national security services. As for the marriage of an Algerian with a foreign spouse, the authorization must obtain the assent of these services.

For an Algerian woman wishing to marry a French, a question supposed to be governed by the regulatory power with some opacity, or she obeys of her father's probable commandments (or other close relative male), demanding that she marry a Muslim, or she contravenes it. Therefore, there is a strong risk of being ostracized by his family, which will probably have civil consequences (inheritance, for example, but also emotional and psychological).

## THE ENGAGEMENTS

Before examining the other conditions of Franco-Algerian marriages, we must briefly mention the role of engagement in French and Algerian law.

In French law, engagements, or "promises of marriage," are not required by law; the doctrine noted the apogee then the decline of betrothal, which the civil code neglected while this social fact engendered, by tradition, questions of a legal order, solved by jurisprudence. The problem arises most often in case of engagement's rupture, which is not a contract. The Fiancee light, seductive and ungrateful, as the Fiancee indecisive, timorous and finally renouncing the union, as there is faulty breach of engagement. More generally, the breaking of the promise is not at fault, to preserve the principle of marital freedom. It gives rise to restitutions: customary presents, donations, because there was no marriage (article 1088 French civil code); gifts and others, except faulty breaking, unless it is family jewellery.

From the Algerian point of view, the betrothal usually accompanies the religious marriage (al Fatiha prologue of the Quran); this one can be contracted and consumed by an Algerian with a minor, formerly, from the first rules of the girl, the marriage could be consumed. It seems that this practice has disappeared. At this occasion, a dowry (Al Mahr- al Sadaq), which will be sometimes symbolic, sometimes substantial, according to the local customs, will be transmitted to the bride (Art 15 of 2005family code: "The dowry is determined in the marriage contract that its payment either immediately. In the absence of determination of the dowry amount, the parity dowry "sadaq el-mithl" is paid to the wife". Moreover, "The consumption of the marriage or the death of the spouse entitles the wife to all of her dowry. She is entitled to half the dowry in

the event of divorce before consumption "(Art 16). Finally, "If, before consumption of the marriage, the dowry gives rise to a dispute between the spouses or their heirs and none of them provides proof, it is ruled, under oath, in favour of the wife or her heirs. If the dispute arises after consumption, it is ruled, under oath, in favour of the husband or his heirs "(Art 17).

The Family Code contains civil provisions on engagement; Art 5 provided that "Engagement is a promise of marriage; each party may renounce it", which amounts to the same result as French law. On the other hand, the system of refunds is more settled: "*If this renunciation results in material or moral damage for one of the two parties, compensation may be pronounced*" (Art 5, al.2) - to approximate art. 1382 of the French Civil Code. The system of refunds follows the act of breakup: "If the renunciation is by the pretender, he can't claim the restitution of any present" (Art 5 al.3) with a slight variant for the bride: "If the renunciation is due to the betrothed, it must restore what has not been consumed "(Art 5 AL.4). Art 6 states that "the betrothal may be concomitant with *al Fatiha* or preceding it with an indefinite duration, and that, as the engagement, which is governed by the provisions of Art 5".

Art.6 states that: "al Fatiha concomitant with the engagement (El-Khitba), in session contractual, if the consent of both parties and the conditions of the marriage are met, in accordance with the provisions of article 9-bis of this law".

## THE LEGAL EFFECTS OF MARRIAGE

### 1- IN VIEW OF ALGERIAN LAW PROVISIONS

Under Algerian law, spouses rights and obligations have common obligations, Art 36:

«The obligations of both spouses are as follows:

1. To safeguard the conjugal ties and the duties of the common life;
2. Cohabitation in harmony and mutual respect in meekness;
3. Contribute jointly to the safeguarding of the family, the protection of children and their healthy education;
4. Mutual consultation in the management of family affairs, and spacing of births;
5. Respect for their parents, their relatives and visit them;
6. To safeguard kinship ties and good relations with parents and relatives;
7. Each spouse has the right to visit and to welcome his parents and relatives in his meekness. "

### 2- GIVEN THE PATRIMONY OF EACH SPOUSE

In Algerian law, in terms of patrimony, art. 37 provides that: "*Each of the two spouses retains its patrimony. However, both spouses may agree, in the marriage certificate or by subsequent authentic instrument, of the community of property acquired during the marriage and determine the proportions belonging to each one of them*".

In French law, the Civil Code insists on those of the parents with regard to the child. Unlike Algerian law, the family is conceived in French law initially as the restricted circle of parents and children. There is no question in this Code of preservation of ties with ascendants, collaterals or relatives as in Algerian law. The family born of marriage is emancipated from the larger one, which nevertheless preserves inheritance rights. These obligations relate to the child's nutrition, maintenance and education (art 203). Conversely, children will, in return, "feed their father and mother or other ascendants who are in need" (section 205 Civil Code). These obligations are for the patrimonial surplus (art 204 to 211).

Marriage in French law gives rise to the respective duties and rights of the spouses (Art 212 et seq.). They are well known, the mayor reminds them to the spouses at the civil wedding: duty of loyalty, relief and assistance (Art 212), including mutual obligation to a community of life (Art 215 al.1). Equality is by right: "each spouse has full legal capacity"; but, as in Algerian law, matrimonial agreements may affect the rights and powers of the spouses (Art 216). For example, Art 223 provides that "each spouse may freely exercise a profession, collect his wages and salaries and dispose of them after having paid the marriage expenses". Moreover, "each spouse administers, obliges and disposes of his personal property alone" (sect 225). These provisions are not affected by the choice of matrimonial regime (sect 226).

The proof of marriage is similar in both Algerian and French law: the Algerian Family Code provides in Art 22. AL.2 that: "In the absence of registration, it is made valid by judgment.

The judgment of validation of the marriage must be transcribed in the civil status at the diligence of the public prosecutor. French civil law also relies on the register of civil status (Art 194 Civil Code). In addition, it treated the state possession which "can not dispense the alleged spouses who invoke it respectively, to represent the marriage celebration act before the registrar" (Art 195, 196 and 197).

### 3- WITH REGARD TO THE ACQUISITION OF CITIZENSHIP

A fundamental right attached to the marriage of an Algerian in France is the grant of French citizenship. It has just been developed by Law No. 2003-1119 of 26 November 2003 "on the control of immigration, stay of foreigners in France and citizenship ". A new article 21-2 of the Civil Code provides that "A foreigner or stateless person who contracts a marriage with a spouse of French citizenship may, after a period of two years from the date of marriage, acquire French nationality by declaration provided that 'at the date of this declaration the community of life so much emotional, of the French language (al. 1). "; "The period of community of living is increased to three years when the foreigner, at the time of his declaration, does not justify having resided continuously for at least one year after the marriage" (al.2). The Civil Code remains unchanged as to the conditions of loss of French citizenship at the request of the person concerned (Art 23.) In the event that the French spouse wishes to fully integrate Algerian citizenship by breaking any tie with France ».

The acquisition of the Algerian citizenship for the French spouse takes place by naturalization according to articles 09-bis of the Algerian citizenship code (Ordinance n ° 05- 01 of February 27th, 2005). The conditions are as follows:

- . Prove that the marriage is legal and effectively established for at least three years at the time of the application for naturalization.
- . Have an habitual and regular residence in Algeria.
- . Have a good behaviour and character.
- . Justify sufficient livelihoods.

Marriage is subdivided optionally in France and obligatorily in Algeria into a civil marriage and a religious marriage. In terms of conflict of laws, some doctrines question whether the religious marriage pronounced in Algeria between a French and an Algerian must be regarded as a matter of personal status, subject to the national law, or form matter subject to the law of the celebration place? They find the answer to this question in the "Arrêt Caraslanis" that "the question of whether an element of marriage celebration belongs to the category of rules of form or the rules of substance must be decided by the French judges according to which the religious or secular character of marriage is a matter of form ".

From the point of view of the French judge under Algerian law, according to the category of French qualification, the *lex loci celebrationis* governs the formal requirements, consists in some articles of Art 18 of the Algerian family code:" The act of civil marriage is concluded before a notary or a legally authorized official (...) ", subject to the provisions relating to the consent of the spouses (Art 9). The 2005 family code partially met the expectations of the liberal feminist movements by anchoring more the civil law the step of the spouses Similarly, Art 19 provides that "Both spouses may stipulate in the marriage contract or, in an authentic contract, any clause that they deem useful, particularly with regard to polygamy and the wife's work . , unless the conditions are contrary to the provisions of this law", Art 20 authorizes the mandate on power of attorney, Art 21 refers to the civil status procedures for registration of the marriage certificate code .

#### ⊕ QUESTIONS:

- TRANSLATE THE UNDERLINED TERMS INTO ARABIC.
- GIVE AN ABSTRACT (IN ARABIC) TO THE TOPIC.