

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of Algeria that appertain to international parental child abduction, contact and relocation as they were at that time. **reunite** International Child Abduction Centre cannot vouch for the accuracy of this information for use in litigation and it is not intended to provide case specific advice.

ALGERIA

Overview

The Algerian legal system has been influenced by French civil law, but the personal status law is based on Islamic Law and Article 222 of the Family Code declares that Sharia is a residual source of law. Article 2 of the 1976 Constitution establishes that Islam is the religion of the State. The Algerian Code shares many aspects with the Moroccan Code and is generally conservative in character in comparison with the Tunisian Code. The Algerian Family Code came into force in 1984 after a series of delays created by the tensions between conservative Islamists and feminist groups. The code was an attempt at a compromise that did not satisfy either group. The Family Code was amended and approved in 2005. These amendments enshrine some reforms that give women more equality in personal status matters, for example in divorce.

The Maliki School of Islamic principles has the most influence in Algeria, although there is an Ibadi minority. There are small Jewish and Christian minorities in Algeria.

Foreign Orders

Where there is no bilateral treaty in existence for the enforcement of judgements, a foreign judgement can be enforced in Algeria if it is granted 'exequatur' by an Algerian Court. An application for exequatur must be lodged with the tribunal of the jurisdiction where the enforcement is sought or where the defendant is resident. An application for exequatur must satisfy the following requirements:

- (1) The foreign legal authority which rendered the judgement had jurisdiction and was qualified to hear the case;
- (2) The parties concerned were duly summoned and represented;
- (3) The foreign judgement is not contrary to the provisions of the Sharia, Algerian public policy or good morals, and
- (4) The foreign judgement must have become enforceable in the country where the decision was made.

In addition, if Algerian courts have exclusive jurisdiction or there has been a prior contrary judgment then the exequatur may not be granted.

Court Structure

The civil system consists of three tiers. At the bottom tier are the Tribunals or *Daira*. These courts hear civil, commercial and some criminal cases. The cases are presided over by one judge. The second tier is the Provincial Court or *Wilaya*. This court hears appeals from the *Daira* and acts as a first instance court for the remaining criminal cases. Each case is presided over by three judges. The final tier is the Supreme Court located in Algiers. This court hears appeals from the Provincial Courts. The Supreme Court is divided into a private chamber that hears civil and commercial cases, an administrative division, a criminal court and a social division that hears labour and social security matters.

Since a state of emergency was declared in 1991 Military courts have taken over some aspects of the judiciary. A Constitutional Council was established in 1989 to rule on the constitutionality of legislation.

Filiation

The provisions regarding filiation are contained in Chapter V Articles 40-46 of the Family Code. Filiation is established by birth within a valid marriage, an irregular marriage or a marriage annulled after consummation, the father's recognition of paternity and other proof. The code is silent on what constitutes proof but under Islamic law this usually means the testimony of two respected witnesses.

According to Article 42 the minimum period of pregnancy is six months and the maximum is ten months. A child born outside of marriage is illegitimate but if the father recognises the child the child will take his name, thereby establishing a legal relationship between the child and the father's family. If the father does not recognise the child as his the child will take the mother's name and the child will not have the right to inherit or receive maintenance from his father, nor will the father be responsible for the guardianship of the child.

Custody

According to Article 62 custody is the education of the child in the religion of the father, schooling and the maintenance of moral and physical health. In the event of divorce custody is granted to the mother by the court unless this is not considered to be in the best interests of the child. If she is unable exercise this right, through incapacity, remarriage or death, then custody is transferred to the mother's mother, then the maternal aunt, then the father, then his mother and then the person next related to the child to the closest degree will be awarded custody, providing that the best interests of the child are so fulfilled (Article 64). The judge has discretion to determine what is in the best interests of the child

and usually will evaluate daily care, health, religious upbringing and academic education, before making a decision

Article 65 states that the period of custody continues until a male child is ten, or up to his sixteenth year, by court order, if the mother has not remarried. A female child remains with the custodian until the legal age of marriage, which is 18 for females in Algeria. Custody will cease if a female custodian marries outside the prohibited degree of relationship to the child or prevents the father from carrying out his guardianship duties by moving the child away from his place of residence. In addition the maternal grandmother or aunt will lose custody if she resides with the mother who has lost custody due to remarriage to a man outside the prohibited degree of relationship to the child.

Guardianship

Even during the period of the mother's custody the father remains the sole legal guardian of the child. If the father dies guardianship then passes to the mother (Article 87). According to Article 91 the right to guardianship may be lost through incapacity, including young age, mental deficiency or wasteful spending, death or court order. If the mother is also deceased or unable to be the guardian, guardianship then passes to the person nominated by the father by will or the testimony of two or more honourable witnesses. This person must be Muslim, sane, an adult (18 for males and 21 for females), trustworthy (as determined by the court) and capable of fulfilling the obligations of guardianship. The court has the power to revoke guardianship from this person if he does not fulfil these conditions. If there is no suitable guardian the court can appoint a *curator ad litem* who has the same authority and obligations as a legal or nominated guardian.

Access

Article 64 of the Law of the Family Code states that when a decision is given on custody the judge must also rule on access rights of the non-custodial parent. This also applies to children who have been legally recognized by their fathers if born out of wedlock. A contact order can be obtained that comes into effect after a divorce. Access must normally be exercised within Algeria but the guardian may consent to access outside of Algeria. This is usually a formal act that must be notarized, otherwise it will be rejected by customs officers at boarder crossings.

Custody should also normally be exercised within Algeria, however Article 69 does permit the custodian to apply to the court for leave to remove the child out of Algeria to live. Decisions are made with regard to the best interests of the child, including the ability of the guardian, usually the father, to perform his guardianship duties.

Non-Muslim Law

There is no separate law for Non-Muslims. The Algerian Family Law is applied to all Algerians regardless of religion.

Nationality

According to Article 6 of the Nationality Code of 1970, children born to an Algerian father automatically acquire Algerian nationality. A child born to an Algerian mother and unknown or stateless father also acquires nationality by parentage. Nationality can also be acquired by birth in Algeria if the parents are unknown or if the mother is Algerian and the father is foreign but was born in Algeria.

Article 22 of the 1975 Civil Code establishes that a dual national of Algeria and another State is subject to the jurisdiction of Algerian law while in Algeria.

Leaving the Jurisdiction

Children under the age of nineteen must obtain the permission of the father in order to be able to travel abroad. This authorisation must be recorded in a document called the *Authorisation Paternelle de Sortie du Territoire National d'un Enfant Mineur*. There is a suggestion that this requirement for the guardian's permission may change, however no official confirmation has been received to date so it should be assumed that permission is still required. Women do not need permission to travel once they have attained the age of majority and have not married. Married women must request their husband's permission to leave the house and therefore their movement can be very restricted.

International Law

In 1988 Algeria established a bilateral agreement with France called the "Convention between the Government of the French Republic and the Government of the Algerian Democratic Republic on children of separated mixed Franco-Algerian Couples". Although this convention is only applicable to the children of mixed Franco-Algerian couples, it has been one of the more successful of the early conventions established between France and the other Maghreb countries.

Algeria ratified the UN Convention on the Rights of the Child in 1993, having issued interpretive declarations with regard to articles 14(1), 14(2), 13, 16 and 17.

Parental Child Abduction

Child abduction is a crime when committed by a person who is not entitled to have any authority over the child. It is not a crime for the father to remove his child since he has legal authority over his children under Algerian law.

Contacts

Ministry of Justice
8 Place Bir
BP 298 Hakim el-Biar
Algiers
Tel: 213 292 4183
Fax:213 279 6557

Ministère des Affaires Etrangères,
1 Rue Ibn Batrane,
El-Mouradia,
Alger
DCI@mae.dz

Ministere de la Solidarite Nationale et de la Famille
Rabea Mechernene, 16000 Alger
Ph#: (213-2) 719-138
Fax#: (213-2) 739-996

EI 27/07/05