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MAURITANIA

Overview

Mauritania is an Islamic Republic and Article 5 of the Constitution of 1991 establishes that Islam is the State religion. Islamic law has had a significant influence in the shaping of the legal system, although civil law has also contributed to Mauritanian law and French codes dominated prior to 1980 when an Islamic Code was introduced to govern civil matters. Law 2001-052 of 19th July 2001 regarding personal status was introduced to govern marriage, divorce and custody.

The majority of the population of Mauritania are Muslims and the Maliki School of jurisprudence has the most influence.

Court Structure

The Structure of the judiciary is established by Law No. 99-039 of 24th July 1999 and the competences of the courts by Law No.99-035 of 24th July 1999 regarding Civil, Commercial and Administrative Procedure. The lower courts include the District Courts, which have jurisdiction over civil and commercial matters that do not come under the jurisdiction of the Regional Courts, for example civil and commercial cases where the value does not exceed 300,000 Mauritanian Ouguiyas. They also have jurisdiction over personal status cases. The Regional Courts are also part of the lower court structure and are divided in to administrative, civil, commercial and criminal divisions. The lower courts also include Labour Courts and Criminal Courts. The courts of the second degree are the Courts of Appeal, which are divided into administrative, civil, commercial and criminal divisions. There is one in the capital of each region. At the third level is the Supreme Court.

Filiation

Article 59 of the Personal Status Law 2001 reads that a child is affiliated to his father if born within a legal marriage, as long as there was the possibility of conjugal relations and paternity has not been denied through legal channels. This is further limited in that the child must be born at least 6 months after the contracting of the marriage and no more than 1 lunar year after a dissolution of a marriage through divorce or death. Furthermore, it is not established if it proved that the husband and wife have not met or if the husband was pre-pubescent or incapable of consummation. However, Article 63 permits the filiation of a child born to an unmarried woman to be established to the person who instigated the relationship, if the sexual relationship was conducted unintentionally. A man can also acknowledge a child who is of unknown origin.

Custody

To be eligible to exercise custody a candidate must be sane, free from contagious disease, able to raise the child and safeguard his or her health and moral education, trustworthy and of good morals, not known as a violent person, able to manage the child's maintenance payments, able to offer a secure home and if the custodian of a Muslim child is not a Muslim then the child must be provided with an Islamic environment. Article 130 reads that a custodian who marries a man who is outside the prohibited degree of relationship to the minor in her care or is not the testamentary guardian will lose her right to custody, unless she is also the child's testamentary guardian or the only nursing woman that the child accepts.

The mother has priority in the exercising of custody of her children followed by the maternal grandmother, the mother of the maternal grandmother, the mother's paternal grandmother, the germaine maternal aunt, consanguine paternal aunt, the maternal aunt of the mother, the paternal aunt of the mother, the paternal grandmother, the father, the paternal aunt, the sister, nieces, the testamentary guardian, the brother, the paternal grandfather, the paternal uncle and finally the son of the paternal uncle. A man who wishes to have custody must have a wife to look after the child.

The period of custody lasts until a female consummates her marriage or until the male child reaches majority. The judge can confer the custodianship of a

male child upon the father at any time after he reaches the age of 7, if it is in the best interests of the child.

Guardianship

Article 15 of the Code of Obligations and Contracts and Article 162 of the Family Code stipulate that the age of majority is set at 18 years, although minors between the ages of 12 and 18 have limited capacity and may dispose of their property with the authorisation of the guardian. The guardianship of a minor child is the duty of the father, then a testamentary guardian designated by the father. The latter must be a Muslim, sane, adult, trustworthy and able to manage the minor's affairs. If the father is deceased and there is no designated guardian the court can choose a guardian. In this case the mother has priority. A guardian, other than the father, must obtain the authorisation of the judge when disposing of the minor's property.

Access

Both parents have visitation rights, unless the court decides otherwise in the best interests of the child. There are no legal provisions for cases of forcible separation from the parents when a child is ill-treated.

Nationality

Article 8 of the Act No. 61-112 of 12 June 1961 regarding Nationality reads that a child born of a Mauritanian father, a child born of a Mauritanian mother and a father who is stateless or of unknown nationality and a child born in Mauritania of a Mauritanian mother and of a father who is an alien, acquires Mauritanian nationality. The latter is entitled to reject that status until the year before he or she attains majority. Furthermore, Article 10 reads that a newborn child found in Mauritania who is of unknown parentage, is Mauritanian. However, nationality will be cancelled if filiation is later established to a foreign father.

International Law

Mauritania ratified the UN Convention on the Rights of the Child in 1991 with a general reservation to articles or provisions, which may be contrary to the beliefs and values of Islam.

Child Abduction

Article 335 of Regulation 83.162 of 9th July 1983 regarding the establishment of a Criminal Code reads that if a judge has issued an order assigning custody and a father or mother or other person who has not been designated as custodian abducts the child, the penalty is between 1 month and 1 year imprisonment and a fine of 5000 to 100000 Mauritanian Ouguiyas. If the abductor has been deprived of paternal power then the penalty is increased to up to 3 years imprisonment.

Contacts

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