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TUNISIA

Overview

The Tunisian legal system is heavily influenced by French civil law but the Law of Personal Status is based on Islamic Law and Article 1 of the 1959 Constitution declares that Islam is the State religion. The dominant school of Islamic jurisprudence in Tunisia is Maliki, with some input from the Hanafi School as a result of Ottoman influence in the region. The Tunisian Law of Personal Status was promulgated in 1956 and has been amended by laws 59-77 of 19th June 1959, 64-1 of 21 April 1964, 81-7 18th February 1981 and 93-74 of 12th July 1993. Among these amendments were articles increasing the parental authority of the mother. Tunisia has gone further than many Middle Eastern countries in the reform of its personal status law. It bans polygamy and extra-judicial divorce and does not automatically give guardianship of children to the father when they reach a certain age.

Foreign Orders

Foreign court orders can be considered in a Tunisian court but they are only enforceable if they are not in conflict with Tunisian Law.

Court Structure

There are no separate courts for the application of family law. Sharia courts were abolished in 1956.

The court system in Tunisia can be divided into four levels. At the first level is the District Court, which has a limited criminal jurisdiction and hears minor matters such as nationality and labour issues. At the next level the Court of First Instance (*al mahkama al ibtida'iya*) has chambers for civil, commercial, criminal and personal status matters. It hears appeals from the

District Courts and each case is presided over by three judges. The Appeal Court (*al mahkama al isti'nafiya*) forms the next level. There are three regional courts in Sousse, Sfax and Tunis. These courts have jurisdiction to hear appeals from the Court of First Instance. At the fourth level is the Supreme Court. This court hears appeals from the Courts of Appeal and First Instance and will only review a case if a breach of the law is the basis for the appeal.

Filiation

Paternity is established by co-habitation, the confirmation of the father or the testimony of two or more trusted witnesses. Whether or not the marriage contract is valid, a child born at least six months after the conclusion of a marriage is considered to be the child of the husband. However, Article 69 of the Law of Personal Status reads that the paternity of a child born to a married woman is not established if it is proved that her husband is not co-habiting with her, or if the child was born more than one year after the absence or death of the husband or a year after a divorce. The legal guardian of a child born outside of a marital relationship is the parent who recognises the child, whether it is the father, the mother or both.

Adoption is permitted in Tunisia.

Custody

According to Article 57 of the Law of Personal Status, while the marriage subsists the mother and father have equal responsibility for the custodianship of the child. However, Article 154 reads that the father is the automatic guardian of a minor child. If a marriage ends in the death of one of the partners, the surviving parent will be awarded custody. In the event of divorce custody may be awarded to one of the parents or a third party. The Tunisian Code does not specify set ages as limits for custody of the mother. All custody cases are decided by the court in the best interests of the child (Article 67). Article 4 of the Child Protection Act states that in considering the best interests of the child the moral, physical and emotional needs of the child, the child's age and state of health and family environment must all be taken into consideration.

According to Article 58 of the Law of Personal Status the person awarded custody must be an adult of sound mind who is trustworthy, able to provide

for the welfare of the child and is free from contagious diseases. It also stipulates that if custody is awarded to a man he must show that there is a woman who will be able to help carry out the responsibilities of the custody. He must also be a relation within the prohibited degree of a female child in his custody. A female custodian must not be married except where it is judged by the court to be in the best interest of the child to award custody to a married woman or if the husband is within the prohibited degree of relationship to the child.

Article 59 states that if the custodian has a different religion to the father of the child their custodianship lasts only until the child reaches the age of 5 and as long as there is no risk that the child would be raised in another religion. However, this does not apply if the custodian is the mother.

Guardianship

If custody is awarded to the mother she enjoys the prerogatives of guardianship as regards travel, schooling and management of finances. Although Article 154 establishes the father's automatic right to guardianship, a judge can confer the full authority of guardianship upon the mother along with custodianship if the father is deceased or if he is unable to exercise his duties. Article 67 places further conditions upon the guardian so that if he abandons his permanent place of residence or if he acts in any way that might put the welfare of the child at risk, his right to guardianship will be lost. Article 60 gives the mother an equal right to supervise the child's affairs and she, along with the guardian, must give consent for a minor child to marry (Article 6).

The period of guardianship lasts until the age of 20. However, a female can marry at 17 and doing so accords her legal majority in personal status, civil and commercial matters.

Access

Article 11 of the Child Protection Act and Article 66 of the Law of Personal Status give both parents the right of access to their child. The child is not permitted to spend the night away from the residence of the person with custody, unless the court gives permission being satisfied that it is in the

interests of the child (Article 60). According to Article 61 if the custodian changes the place of residence and moves to such a distance that the guardian is unable fulfil the duties of guardianship, the custodian will lose the right to custody of the child. A foreign mother who is awarded custody can seek a court order allowing her to exercise custody outside of Tunisia. This permission is not usually granted except where the parents agree.

Article 62 states that when the mother has custody, the father cannot remove a child except with her permission or if the child is at risk if he or she is not removed.

Non-Muslim Family Law

The Tunisian Law of Personal Status is applied to all Tunisians regardless of their religion.

Nationality

Nationality is determined by the Tunisian Nationality Code. Article 6 of this code states that Tunisian nationality is acquired by a child born to a Tunisian father, or to a Tunisian mother if the father is unknown or has no nationality. A child born in Tunisia to a Tunisian mother may also be entitled to Tunisian nationality even if the father is of foreign nationality.

Leaving the Jurisdiction

Tunisians under the age of 20, the age of majority, cannot travel outside of Tunisia without the permission of the father, a Tunisian mother or the court. To renew or obtain a passport permission of the father is needed.

International Law

Tunisia has signed bilateral agreements with France in 1982 (Convention between the Government of the French Republic and the Government of the Tunisian Republic on judicial co-operation in matters of custody, access and maintenance) and Belgium in 1989 (The Agreement Protocol establishing a Belgian-Tunisian consultative committee on civil matters). According to the paragraph 303 of the Tunisian report submitted to the Committee on the Rights of the Child in 2001, approximately one third of the cases submitted

to the committees set up by the bilateral agreements had been resolved amicably. The cases were resolved through a court decision to return the child or by the exequator of a foreign judge. Reasons stated for the unsuccessful resolution of cases are the rejection by the court of the application of return or exequator for reasons of public order or the child's best interests, or because the child had reached the age of discretion and had expressed a desire to remain in Tunisia and not to return to the left behind parent.

Tunisia has also signed the Convention on the Rights of the Child and it was ratified in 1992. Tunisia has reservations regarding Articles 2, 6, 7 and 40 (2) (b) (v).

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