

The Power Of The French Judge To Annul A Marriage Concluded In Algeria

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Abstract:

This study investigates the power of French judges in annulling marriages formed in Algeria, emphasizing the disparities between the French and Algerian legal frameworks. It addresses the complexities that arise when applying French law to Algerian marriage contracts, particularly concerning matters of inheritance and remarriage. A key issue is the recognition by French courts of marriages entered into in Algeria, in light of the significant differences between the two legal systems. The analysis delves into the practical ramifications and cross-border legal challenges, examining pertinent judicial rulings and their implications within the scope of private international law.

Keywords: marriage contract, annulment of marriage, recognition of foreign marriages, family law, private international law.

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1. INTRODUCTION

Marriage is a multifaceted institution shaped by both social and legal factors, varying significantly across cultural and legal contexts. This diversity is particularly evident when comparing the marriage systems of France and Algeria. In Algeria, marriage is defined as a contractual agreement between a man and a woman, grounded in Islamic tradition, while French law has evolved to recognize same-sex marriages. Despite these differences, both systems share a formalistic approach, requiring a solemn act for a marriage to be legally valid.

The dissolution of marriage, including annulment, is governed by specific conditions in each legal system. In both Algeria and France, judicial authority is responsible for declaring a marriage nullified. However, the consequences of such declarations differ significantly between the two countries. Under Algerian law, the marital bond persists even after annulment, affecting inheritance rights and remarriage. In contrast, French law treats annulled marriages as completely dissolved, terminating inheritance rights and allowing both parties to remarry.

These divergent legal provisions can lead to complex issues, particularly in private international law. There has been a notable increase in cases where French courts annul Algerian marriages, raising important questions about the recognition and effects of these annulments. Understanding how French courts address marriages contracted in Algeria is crucial for addressing these legal challenges.

This study aims to explore the extent to which a marriage contracted in Algeria is recognized by French jurisdiction. To address this issue, we will use an analytical approach to highlight the key aspects of this topic. The study will be structured as follows :

- Section 1 : The conceptual framework of marriage contracts in Algerian and French law.
- Section 2 : The role of French courts in the annulment of marriages concluded abroad.

- Section 3 : The legal consequences of annulled marriages under both French and Algerian law

2. The conceptual framework of the Algerian and French marriage contract

The conditions and elements of marriage, as well as the grounds for annulment, differ from country to country. Legal and doctrinal definitions also vary, particularly due to religious considerations; from here studying these elements will allow us to better understand the general idea behind our subject.

As part of an in-depth analysis of the grounds for marriage annulment, it is imperative to examine the legal concepts of marriage as codified in the respective bodies of legislation. Algerian family law, in its normative conceptualisation, approaches the marital union through the prism of article 04 of the Family Code. This legal provision enshrines a contractual approach to the institution of marriage, characterising it as a bilateral commitment between two parties of opposite sexes, formalised in accordance with the legal provisions in force.

This legal construction is not limited to a simple contractual formalisation, but encompasses multiple and complex purposes. These include the vocation to establish a family unit based on a triad of values: mutual affection, reciprocal benevolence and intra-family solidarity. In addition, this legal conception of marriage incorporates an ethical dimension, aimed at guaranteeing the moral protection of the spouses. Lastly, it is part of a broader perspective of preserving and strengthening the social fabric, by working to perpetuate family ties.¹

In the French legal context, the legal conceptualisation of marriage finds its normative expression in Article 143 of the Civil Code. This legislative provision offers an innovative and inclusive definition of the institution of marriage, transcending traditional paradigms of gender difference. Indeed, the French legislature, in its wisdom, has chosen to embrace a broader vision of the conjugal union, recognising its validity for both heterosexual and homosexual couples.

This modern legal approach is accompanied by rigorous procedural

formalities designed to guarantee the solemnity and legitimacy of the act.²

Examining these two articles couples reveals two key differences between the French and Algerian concepts of marriage. In French law, marriage is considered a civil act that formalizes the union of two individuals, regardless of their sex, encompassing both opposite-sex and same-sex . This fundamental difference between the The Algerian family legislation and the French Civil Code also affects the elements, conditions, and grounds for marriage.

Article 4 of the Algerian family legislation and Article 143 of the French Civil Code have enabled us to identify the legal framework of marriage in the two systems. This gives us a basis for comparing the points of view of the two legislations on marriage and for analysing the position of the French judge with regard to Algerian marriage contracts. We can now examine in more detail the elements, conditions and grounds of each legal system

2.1 Conditions of validity and reasons for invalidation of marriage in Algeria.

In the Algerian legal system, the marriage contract is defined with distinct components. The legislator differentiates between the fundamental elements that constitute the marriage and those that ensure its validity. Central to this framework is the mutual consent of the parties, which is deemed the essential element of the marriage contract.³

Other aspects, while crucial, are categorized as conditions of validity rather than core components. These conditions include :the legal capacity of the parties to marry, the payment of the dowry, the presence of a marital guardian (wali) the presence of two witnesses, the absence of any legal impediments to marriage, adherence to official formalities.

This legal framework underscores the primacy of consent in forming a marriage, while acknowledging that these additional conditions are vital for ensuring the legitimacy and social and legal recognition of the union.

2.1.1 The element of the marriage contract:

In Algerian law, marriage is viewed as a consensual contract that requires the full agreement of both parties.⁴ The legal provision set out in

Article 9 of the Algerian family legislation stipulates that the mutual agreement of the future spouses is the basis for the formation of a matrimonial contract. This consent can be expressed by any means that clearly conveys the intention to marry. Furthermore, Article 10, Paragraph 1 of the Family Code reinforces this by stating, « Consent arises from one party's request and the other party's acceptance, expressed in any term indicating a legal marriage. »

The analysis of these legal provisions leads us to conclude that a marriage is deemed absolutely nullified if there is a lack of consent. It is crucial to highlight that the validity of a marriage depends not only on the mutual agreement of the spouses but also on meeting specific substantive and formal conditions

2.1.2 The conditions of the marriage contract:

The conclusion of a marriage requires not only the mutual agreement of the future married couple but also adherence to several legal conditions, including the provision of a dowry, whether it is deferred or not. According to Article 40/2 of the Civil Code,⁵ the future spouses must have attained the legal age of 18. Additionally, the marriage must be conducted in the presence of a legal guardian, known as a “wali.” This guardian may be the bride’s father, a close relative, or another individual selected by her. In case the bride-to-be does not have a guardian, the judge acts as the legal guardian.⁶

Legislation requires the presence of two witnesses at the marriage ceremony, as specified in Article 9 bis of the Family Code (FC). Additionally, the future spouses must be free from any legal impediments, whether permanent or temporary, that would obstruct their union, in accordance with Articles 23⁷ and 24⁸ of the Fc

Finally, to be valid, the marriage contract must be officially signed before a notary or an authorized official, in accordance with article 18 of the FC. The mutual agreement of the married couple being an essential element, it is added to the other legal conditions for the validity of the marriage

Having examined the constituent elements of marriage and the conditions for its validity, we will now focus on discussing the grounds for

annulment.

2.1.3 Reasons for invalidation of the marriage contract:

The Algerian legislator has adopted a distinctive approach to marriage nullity, differentiating itself from traditional legal doctrines. Rather than providing a clear definition of a void marriage, the legislator has chosen to enumerate specific circumstances that lead to nullity. According to Article 32 of the Family Code, a marriage may be declared void if it involves an impediment or contains a clause that contradicts the purpose of the contract. This provision covers various scenarios, including absolute and temporary impediments to marriage, the absence of one or more essential conditions for validity, and clauses that undermine the fundamental nature of marriage. For instance, a contract that stipulates the husband will not support his wife or excludes her from inheritance would be deemed void. Furthermore, Article 33 of the same code identifies vitiated consent as an additional ground for nullity.⁹

2.2 Conditions of validity and annulment of marriage in France

French and Algerian law exhibit substantial differences regarding the conditions for marriage contracts and reasons for invalidation. These differences are primarily due to the divergent legislative sources of each legal system, which play a critical role in generating conflicts of law and jurisdiction. This disparity underscores the complexity of the issue and the significant challenges involved in resolving it.¹⁰ To gain a clearer understanding of these challenges, it is crucial to closely examine the conditions necessary for a valid marriage and the reasons for annulment within the French legal system. This detailed analysis will help elucidate the foundations upon which judges base their decisions when annulling a marriage contracted in Algeria.

2.2.1 the conditions of the marriage contract

In France, the legislator has established conditions for marriage that are categorized into two types: substantive conditions and formal conditions. This approach contrasts with the Algerian legislator's framework. Substantive conditions in French law involve the capacity and, as outlined in Articles 144, 146, and 180 of the Civil Code.¹¹ In contrast, formal conditions pertain to the procedural aspects of the marriage contract,

which must be executed by deed before a notary, as specified in Article 1394 of the Civil Code. Additionally, the formal conditions include the stipulations for the publicity of the marriage contract, detailed in Article 1394, paragraph 1 of the same Code.¹²

Article 202-1 of the French Civil Code states, « The qualities and conditions required for contracting marriage are governed by the personal law of each spouse. Regardless of the applicable personal law, marriage requires the mutual agreement of the married couple as defined in Article 146 and the first paragraph of Article 180. »¹³ This provision indicates that the French legislator allows for the application of foreign law to a spouse, provided that the consent meets the stipulations set out in Articles 146 and 180 of the Civil Code. However, this approach can lead to complications, as the concept of consent and its related issues may be interpreted differently under Algerian law.

2.2.2 Grounds for annulment of the marriage contract :

The French legislator categorizes the grounds for marriage annulment into two types: relative nullity and absolute nullity.¹⁴ Relative nullity can be invoked in cases where there is a lack of consent or insufficient family authorization. Absolute nullity, on the other hand, pertains to more severe issues such as the absence of consent from one or both spouses, incest, the lack of matrimonial intent, or bigamy. These principles extend beyond marriages involving French citizens. For instance, [the Supreme Court](#) has applied these grounds within the realm of private international law by annulling a marriage between two Algerian nationals due to bigamy.¹⁵ This ruling demonstrates that absolute nullity, including the ground of bigamy,¹⁶ is applicable even when the parties involved are not French citizens.

The grounds for annulment of marriage in France and Algeria present structural similarities, with a distinction between relative and absolute causes. This divergence partly explains why valid marriages in Algeria can be annulled by the French judge

As noted, both France and Algeria allow for the annulment of a marriage if the marriage certificate fails to meet substantive and formal stipulations. However, such a decision may also conflict with public order in both jurisdictions. While both legal systems acknowledge annulment due to lack of consent, the specific conditions, grounds, and effects differ significantly. This divergence primarily stems from the distinct sources of French¹⁷ and Algerian¹⁸ law. Consequently, the grounds for marriage annulment in France may not align with those in Algeria. This difference is especially evident in four key areas: the validity conditions of the marriage

contract, the grounds for annulment, the concept of annulment itself, and the form and understanding of consent.

It is evident that the authority of the French judge regarding the annulment of marriages contracted in Algeria extends beyond merely issues of consent, although the forms of consent under French law are varied. Indeed, spouses annulment of their marriage at any time, whether before or after consummation, and for reasons that may not involve defects of consent or traditional matrimonial impediments. This broad scope of authority for both the parties involved and the French judiciary raises important questions about the origin and limits of this jurisdictional power, especially when considering the annulment of a marriage that is deemed valid under Algerian law.

3.The jurisdiction of the French court in matters of annulment of a marriage contract concluded abroad.

Either spouse can initiate proceedings to annul a marriage, commonly on the grounds of lack of consent. However, other grounds for nullity, such as bigamy or the absence of matrimonial intention, may also be cited.

When it comes to annulling a marriage contracted in Algeria, a French judge relies on various legal sources, primarily : The EU legislation known as Brussels II bis, along with France's domestic laws.

To fully understand the scope of French judicial jurisdiction, it is necessary to examine each of these sources individually. This analysis will also allow us to compare the authority of the French judge with that of the Algerian counterpart.

3.1 Brussels II bis Regulation

Regulation (EC) No. 2201/2003, known as Brussels II bis, dated November 27, 2003, is a key legal reference enabling French judges to annul foreign marriages.¹⁹ This European legislation governs divorce, legal separation, and annulment of marriage. It is important to note that Brussels II bis applies solely to the dissolution of the marital bond and does not address ancillary issues such as maintenance obligations or the property consequences of marriage.²⁰

Article 3 of this European legislation outlines the criteria for jurisdiction in matrimonial matters. It grants jurisdiction to the courts of the Member State where the spouses are habitually resident, or, if one of them

still resides in their last habitual residence, or where the defendant is habitually resident. Under Article 3, French courts have jurisdiction over divorce and annulment proceedings if either spouse resides in France or holds French nationality.²¹

In a case where trial judges had incorrectly assigned jurisdiction to the Algerian courts, the Supreme Court overturned their decision.²² Supreme Court relied on Article 2 of Regulation (EC) No. 1347/2000, effective from March 1, 2001. This article stipulates that the competent court for annulment proceedings is in the Member State of the spouses' last residence, provided one of them still resides there. In this instance, since the plaintiff was residing in France, the French courts were deemed to have jurisdiction.

3.2 National law

Under French common law, the rules of jurisdiction typically grant exclusive jurisdiction to French courts, even when there is a substantial connection to foreign jurisdictions. Consequently, a French judge may have the authority to annul a marriage between two Algerian nationals that was contracted in Algeria.

National law is primarily outlined in the Civil Code and the Code of Civil Procedure. Article 3, paragraph 3 of the Civil Code serves as the cornerstone of French private international law. This provision is crucial as it allows French law to be applied in sensitive legal areas, particularly concerning personal status and capacity. It establishes a fundamental connecting mechanism to determine the geographical scope of French law in cases involving foreign elements.²³

Additionally, Articles 14 and 15 of the Civil Code provide a jurisdictional criterion based on French nationality. These articles grant French courts direct jurisdiction,²⁴ whether a French national is the plaintiff or the defendant.²⁵ However, these provisions do not apply to matters governed by supranational instruments, such as international conventions and European Union regulations.

Regarding the Code of Civil Procedure, Article 1070 outlines the territorial jurisdiction of French courts. It stipulates that French judges have jurisdiction over matters of marriage annulment if the family resides within

French territory. Specifically, Paragraph 1 states, « The family court with territorial jurisdiction is the court of the place where the family resides. »²⁶

The relevant article grants exclusive jurisdiction to French courts in certain matrimonial cases. According to this provision, the mere presence of the spouses on French soil, regardless of their nationality, is sufficient to establish French jurisdiction, thereby limiting the application of indirect jurisdiction by foreign courts. This interpretation was upheld by the Cour de Cassation in a case involving an Algerian couple.

In short, the exclusive jurisdiction of French courts typically excludes the jurisdiction of foreign courts, presenting a challenge to recognizing their jurisdiction. Although case law introduces the concept of indirect jurisdiction,²⁷ which can diminish the French judge's authority in favor of foreign courts, this principle is often ineffective due to the broader framework of international sovereignty. Generally, international law grants concurrent jurisdiction to each state, which limits the impact of French exclusive jurisdiction.

4 The fate of the annulled marriage contract in French and Algerian law

Both French and Algerian legislators recognize the critical importance of consent as the primary ground for annulling a marriage. However, French law significantly expands the reasons for invalidation beyond consent, as outlined in Articles 180 and 184 of the Civil Code²⁸. These provisions encompass issues such as polygamy, bigamy, marriages under duress, and lack of matrimonial intent.

It is within each state's rights to establish its own legal standards to protect its citizens and regulate their relationships. From this perspective, the French legislator believes that certain circumstances, such as those mentioned, justify annulment on the grounds of violating French public policy. This has been enshrined in the rulings of the Supreme Court.²⁹ While this approach is generally straightforward, complications arise when dealing with a marriage conducted and consummated in Algeria, which is valid under Algerian law. This situation introduces complex legal questions regarding the reciprocal recognition of legal documents between the two

countries and the resolution of conflicts of law in family matters.

The issue of annulling an Algerian marriage within French territory presents a complex legal challenge that intersects private international law, fundamental human rights, and public order principles. In this context, the spouse seeking to maintain the marriage faces significant legal hurdles when confronted with a request for annulment before the French courts.

This situation raises concerns about the alignment of French legal standards with supranational norms protecting the right to marriage and family life. On one hand, French courts often invoke national sovereignty to justify applying domestic laws to foreign marriage contracts. On the other hand, this approach may conflict with France's international commitments, particularly those under the European Convention on Human Rights,³⁰ potentially bringing the matter before the European Court of Human Rights.³¹

This division highlights the need for a thorough examination of how domestic law intersects with France's international obligations concerning the protection of fundamental rights, especially within the sensitive realm of family law and cross-border matrimonial issues. The following elements will provide a framework for exploring this question in greater depth.

4.1 The fate of the annulled marriage contract under French law

The conditions for the validity of marriage are rigorously defined by French law regardless of the place of its celebration or the nationality of the spouses. The basis of this regulation is article 202-1 of the Civil Code.³² This article establishes two essential principles: the personal legislation of each spouse regulates the characteristics and conditions necessary for marriage, the agreement of the spouses is a universal and indispensable requirement, going beyond personal laws.

Article 146 of the Civil Code highlights the importance of consent by stating that « there is no marriage when there is no consent ». Article 202-1 strengthens this provision by reaffirming this requirement, regardless of the legal framework in force. According to article 146 C.civ, French law is applied, regardless of the personal law of the spouses. If these conditions or the conditions set out in articles 144, 146, 146-1, 147, 161, 162 and 163 of the Civil Code³³ are not respected, the marriage may be contested.

In this situation, case law, in particular the judgment of the Supreme Court of May 18, 2022,³⁴ reinforces this interpretation which has given rise to numerous comments in legal doctrine, highlighting the constant importance of these principles in the law French matrimonial.

Complex questions arise about the annulment of marriages celebrated in Algeria, especially when it concerns consummated and valid unions under Algerian law. The most debated subject is the question of the annulment of a marriage based on the facts or on the sole allegation of a husband that his spouse had no real matrimonial intention, even after decades of common life and the birth of children.³⁵ Regardless, the cancellation is seen as a violation of Algerian public order.

The annulment of a marriage eliminates any claims for compensation and retroactively invalidates the marriage. However, children born from the marriage remain unaffected by this retroactive effect.³⁶ In such cases, including those involving fraud, proving bad faith on the part of the defendant spouse can be challenging. Some scholars argue that judges should focus on the factual circumstances rather than the parties' intentions, as this issue is closely related to the principle of respecting individual conscience.³⁷

The plaintiff's claims are not always accurate. Sometimes, a spouse seeking separation may use this tactic to reduce personal consequences.³⁸ Several factors may drive this behavior, such as realizing after cohabitation that the partner is unsuitable, discovering undesirable personality traits, or facing cultural differences. The situation becomes more complex when nationality issues are involved, such as when one spouse is French or holds dual nationality, while the other is Algerian or in the process of regularizing their residency status in France.³⁹

A particularly significant aspect of this issue is the approach taken by the French judiciary towards the defendant spouse, especially when there is suspicion that the marriage was entered into for financial gain. In these cases, judges often rely heavily on the plaintiff's allegations, giving undue weight to the presumed intentions of the defendant while diminishing the importance of the defendant's statements.⁴⁰ This tendency is notably more

pronounced when the defendant is a foreign national residing outside French territory. Such practices may challenge the respect for the fundamental right to a defense, a right upheld by various international treaties and agreements, which is essential for ensuring a fair trial.

Several court decisions highlight this issue, with a notable example being a ruling by the Metz court,⁴¹ which declared a marriage between two Algerian spouses **nullified** at the wife's request. The wife claimed that her husband had no intention of continuing the marriage. This decision, seemingly made without the husband's presence or adequate representation, underscores the potential conflicts between the application of French law and the protection of fundamental rights, especially when foreign nationals are involved.

This practice raises concerns about balancing judicial efficiency with the protection of all parties' rights, particularly in an international context where differing legal systems can add complexity. The issue is exacerbated when one spouse, residing in Algeria during the proceedings, was neither heard nor represented in court⁴². This situation reveals a noticeable confusion within French law between three distinct concepts : consent to marriage, the concept of a "marriage of convenience", the absence of genuine matrimonial intent.

This confusion between a lack of consent and a marriage of convenience raises important questions about the interpretation and application of French matrimonial law, especially in the context of international marriages. It underscores the challenges in distinguishing between a genuine defect in consent and a shift in feelings or intentions that may occur after the marriage.

The presence of a special interest in a matrimonial union does not serve as conclusive evidence of a lack of matrimonial intent or a desire to dissolve the marriage on the part of the spouse benefiting from it.

These cases underscore the issue of simulated unions, whether categorized as white or grey marriages. Often, these unions represent a blend of the two, with a white marriage concealed as a grey marriage. In such scenarios, one spouse, having received the anticipated benefit, assumes the role of a victim and withdraws from the tacit agreement with

the other spouse. This strategy aims to obscure the true nature of the union, which was initially established for utilitarian reasons, by presenting it as a grey marriage where only one spouse is deemed to have acted in bad faith.⁴³ This approach is problematic because, under Algerian law, a marriage of convenience does not automatically lead to annulment. Furthermore, the absence of matrimonial intent by one party does not necessarily equate to a lack of consent to the marriage. Some individuals enter into a marriage for practical purposes while still fully adhering to its legal obligations

As a result, frequently conflating the absence of matrimonial intent with a lack of consent creates significant conceptual confusion. This misinterpretation can be particularly unfair to a defendant spouse who has given their consent to the marriage, as consent is a fundamental and defining element of the marriage contract.

4.2 the fate of a marriage contract annulled under Algerian law

French court rulings to annul marriages are often rejected by Algerian judges, who exercise their sovereign assessment to determine that such judgments violate the conditions for annulment established by Algerian law. This discrepancy is viewed as undermining Algeria's national public policy, a key principle in private international law.⁴⁴

The primary challenge in this context is the applicant spouse's difficulty in conclusively proving that their annulment application, based on specific facts or allegations of defective consent, meets the criteria set by Algerian law.⁴⁵ Algerian courts are stringent and require more than mere allegations or evidence of a lack of matrimonial intent to declare a marriage nullified.⁴⁶ Consistent case law in Algeria demands tangible and irrefutable evidence. This stance was affirmed by the Supreme Court in its ruling of 3 November 1986, which stated that « a marriage lawfully entered into can only be declared nullified on specific grounds provided by law, and nullity cannot result from the mere will of the spouses. »⁴⁷

In this context, a notable case law from the French Court of Cassation on 4 November 2015 is particularly significant.⁴⁸ In this case, the high court declared null and void a marriage between two Algerian nationals, one of whom also held French nationality. The decision was based on the

determination that the husband lacked genuine matrimonial intent, as the purpose of the marriage was considered to be unrelated to the institution of marriage

This decision clearly conflicts with Algerian public policy, as matrimonial intent is not a legal condition for marriage annulment under Algerian law.⁴⁹ Consequently, an Algerian family court cannot annul a marriage, particularly if it has been consummated. In such cases, the spouse seeking to end the marriage must pursue divorce proceedings, as annulment is not a viable option under Algerian law.⁵⁰

For instance, the Batna court ruled that a judgment from the Nice Tribunal de Grande Instance, which had declared the marriage between two Algerian nationals nullified, was not enforceable. The French court's decision was based on the claim that the husband lacked genuine matrimonial intent, and that his primary aim was to obtain residency rights in France.

The Algerian judge denied the exequatur on two primary grounds:

The inherent difficulty in convincingly proving the intentional and moral aspects of matrimonial commitment, both for the plaintiff and the judicial authority. The need for the marriage contract to comply with Algerian legal provisions concerning its formation and validity.

The judge noted that, given the circumstances, it would have been more appropriate for the plaintiff to pursue a divorce in Algeria to dissolve the marital union, rather than seeking annulment. He also clarified that claiming an alleged lack of matrimonial intent does not constitute a valid legal basis for marriage annulment under Algerian law.⁵¹

Regarding French courts, it is important to note that they often grant applications for marriage annulment. This practice provides requesting spouses with a relatively straightforward means of dissolving the marriage, offering both economic advantages and exemption from any compensation obligations.

On 25 March 2010, the Batna court refused to grant exequatur to a French judgment that had annulled a marriage between Algerian nationals on the grounds of bigamy.⁵² The judge justified the decision by referencing the legality of polygamy under Algerian law, emphasizing that the existence

of a prior marriage does not invalidate a subsequent union under national legislation

The Supreme Court subsequently endorsed this position. It ruled that the plurality of matrimonial unions contracted by a man could not constitute an admissible legal basis for declaring a marriage nullified under Algerian law.

Consequently, it overturned the decision of the court of first instance, which had declared the marriage nullified on the grounds of bigamy.⁵³ This case law highlights the fundamental divergence between the French and Algerian legal systems in their understanding of polygamy and its effects on the validity of the marital union.

This situation highlights the complexities of private international law and the challenges posed by the mutual recognition of judicial decisions between France and Algeria in family law matters. It also highlights the differences in approach between the two legal systems regarding the conditions for validity and annulment of marriage.

5. CONCLUSION

At the end of this study, it appears evident that the criteria for annulling a marriage differ significantly between French and Algerian courts, leading to considerable legal challenges in transnational cases. The study also shows that French courts recognize marriages conducted in Algeria, provided they do not violate the grounds for annulment as defined by French law. However, the greater discretion granted to French judges, in contrast to the stricter Algerian legislation, creates a legal inconsistency that disadvantages the parties involved. Additionally, the tendency of French judges to favor the plaintiff's claims, particularly when the defendant is a foreigner, exacerbates these issues and highlights concerns about procedural fairness.

The primary issue at hand is the legal and social impact of a French judge annulling a marriage that is valid under Algerian law. This jurisdictional conflict places the spouses in a position of legal ambiguity, facing conflicting legal systems. The failure to enforce French rulings in Algeria underscores the challenges inherent in navigating between different

legal frameworks. This situation underscores the need for a thorough examination of the global harmonization of annulment procedures and the mechanisms for mutual recognition of judicial decisions. It is crucial to reassess the doctrine of jurisdiction to find a balance between national sovereignty and international judicial cooperation, addressing the realities of transnational marriages while safeguarding individuals' fundamental rights

The outcome reveals a substantial divergence between the conditions for matrimonial annulment in France and Algeria, with French courts often favoring the plaintiff's claims, especially when the defendant is foreign. This discrepancy creates a confusing legal situation for spouses, who encounter conflicting court decisions. The existing legal framework fails to address the challenges posed by transnational unions, underscoring the need for global harmonization of annulment procedures. These observations emphasize the growing complexity of matrimonial disputes in a globalized world and call for a reevaluation of current approaches.

To address the current issues, it is recommended that a more balanced approach be adopted when assessing the intentions of the parties involved, and that the concept of indirect jurisdiction be applied more straightforwardly. Establishing mechanisms for the mutual recognition of judgments between states and re-evaluating the doctrine of jurisdictional competence in transnational matrimonial cases are also advised. These measures should be accompanied by enhanced international judicial cooperation, which would respect national sovereignty. Ensuring the right to a fair defense for Algerian defendants is crucial, particularly by facilitating easier access to visas for their appearance before French judges. The goal of these recommendations is to create a more equitable and effective legal framework for resolving cross-border matrimonial disputes.

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²⁰ Guide pratique pour l'application du règlement Bruxelles II Bis, union européen, Belgique, 2014, p 09.

²¹ François Mélin, Règlement Bruxelles II bis : date de la saisine de la juridiction, <https://www.dalloz-actualite.fr/flash/reglement-bruxelles-ii-bis-date-de-saisine-de-juridiction>, édition du 28 juin 2024, seen on 12/07/2024 at 20h42.

²² Cass 1st Civ , 28 November 2007, appeal no. 06-16.443, <https://www.dalloz-actualite.fr/> édition du 5 janvier 2023, seen on 13/07/2024 at 22h15.

²³ Article 3 of the Civil Code provides that “The laws concerning the state and capacity of persons govern the French, even if they reside in foreign countries...”

²⁴ PONSARD André, Le contrôle de la compétence des juridictions étrangères, Droit international privé : travaux du Comité français de droit international privé, 7e année, 1985-1986. 1988.p 50.

²⁵ Article 14 of the Civil Code provides that 'even if the foreigner is not resident in France, he may be summoned before the French courts for the performance of obligations entered into by him in France with a Frenchman; he may be brought before the French courts, for obligations he has contracted in a foreign country towards French...' , article 15 of the Civil Code provides that “A Frenchman may be tried in a court of France for obligations he has contracted in a foreign country, even with a foreigner.”

²⁶ Code of Civil Procedure, 114 ed, Dalloz, 2023.

²⁷ *Rev. crit. DIP* 1985, 369, l'article de FRANCESKAKIS Philippe, « le contrôle de la compétence du juge étranger après l'arrêt Simitch de la Cour de cassation », p 243 ; *clunet* 1985, 460 note A. HUET ; *D.* 1985, 469, note J.MASSIP, I.R. 497, obs. AUDIT Bernard ; *Grands Arrêts*, n°67.

²⁸ Article 184 of the Civil Code provides that “Any marriage contracted in contravention of the provisions of articles 144, 146, 146-1, 147, 161, 162 and 163 may be challenged, within thirty years of its celebration, either by the spouses themselves, or by all those who have an interest in it, or by the public prosecutor.”

²⁹ Cass 1st Civ, 01 juin 2011, appeal no: 09-71.992, published in the bulletin. <https://www.legifrance.gouv.fr>, seen on 17/07/2024, at 15h25.

³⁰ Without author's name, quel-est-le-role-de-la-cour-europeenne-des-droits-de-lhomme, <https://www.vie-publique.fr/fiches/38293-quel-est-le-role-de-la-cour-europeenne-des-droits-de-lhomme>, updated on 09/01/2023, seen on 20/07/2024 at 17h06.

³¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, <http://www.gisti.org/spip.php?article520>, updated on 01/03/2022, seen on 22/07/2024, at 17h30.

³² Law no. 2013-404 of 17 May 2013 and supplemented by Law no. 2014-873 of 4 August 2014. <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000029330832> seen on 20/07/2024, at 17h30.

³³ Please refer to the provisions of articles 144, 146, 146-1, 147, 161, 162 and 163 of the Civil Code.

³⁴ Cass 1st Civil, 18 May 2022, appeal no. m 21-11.106, published in the bulletin, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000045822927>, seen on 22/07/2024, at 22h14.

³⁵ "According to Article 181/185 of the Civil Code, "the petitioner has a period of 5 years from the day of the marriage celebration in the case of relative nullity and 30 years in the case of absolute nullity. "

³⁶ CHABOU Sarah, Les points à retenir sur l'annulation du mariage, <https://www.justifit.fr/b/guides/droit-famille/annulation-du-mariage>. seen on 25/07/2024, at 14h25.

³⁷ MAYER Pierre, HEUZE Vincent, *droit international privé*, 9^{ème} éd, Montchrestien, France, 2007. p 191.

³⁸ Cass 1st Civ, 13 October 1998, Appeal no: 96-21263, not published in the bulletin, <https://www.legifrance.gouv.fr>

³⁹ Cass 1st Civil, 30 April 2014, appeal no. m 13-16.507, not published in the bulletin, <https://www.legifrance.gouv.fr>.

⁴⁰ Cass 1st Civil, 4 November 2015, appeal no. m 14-23784, not published in the bulletin, <https://www.legifrance.gouv.fr>.

⁴¹ T.G.I Metz, 15 June 2006, no. 00178/06, not published.

⁴² T.G.I Haute Savoie, le 21 avril 2005, n°02163/05, unpublished.

⁴³ "It should be noted that 'sham marriage' and 'grey marriage' refer to two distinct processes. In the former, both spouses enter into a marriage without genuine matrimonial intentions. In the latter, one spouse deceives the other about their true intentions." <https://www.alexia.fr/fiche/6310/mariage-blanc-gris.htm>. seen on 30/07/2024 à 19h34.

⁴⁴ Hicham Ali Sadek, Private International Law, University Publishing House, Alexandria, 3rd edition, égypte, 2004, p. 285.

⁴⁵ Supreme Court decision, 03 november 1986, Legal Review no. 2/89, p. 94.

⁴⁶ Decision of the Court of Appeal of Constantine, 04 January 2015, no. 02514, unpublished.

⁴⁷ Supreme Court decision of 3 november 1986, previously cited, note 54.

⁴⁸ Cass 1st Civ, 4 November 2015, previously cited, note 19.

⁴⁹ See article 32-33 of the family code algérien

⁵⁰ Batna Court, judgement of 04 julay 2009, no. 02122/09, not published.

⁵¹ Batna Court, judgement of 4 January 1995, no. 03152/95, not published

⁵² Batna Court, judgment of 25 March 2010, no. 223154, not published.

⁵³ Batna Court, judgment of 02 May 1991, no. 223154, not published.