

Prior Administrative License in Mixed Marriages under Algerian Law**الترخيص الإداري المسبق في الزواج المختلط وفق القانون الجزائري****Djendouli Fatima Zohra♦**

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Date of submission: 26/01/2026**Date of acceptance: 20/06/2026****Date of publication: 30/06/2026****Abstract:**

A mixed marriage is defined as a union between two persons of different nationalities, requires substantive and formal conditions, which are not sufficient alone. Such a marriage cannot be concluded without prior administrative authorization from the competent authorities. This license is granted only upon meeting specific legal requirements and remains valid for a limited period. Failure to obtain it leads to various legal consequences, which differ depending on whether the issue arises at the stage of registration or after consummation without registration due to non-compliance.

The study concludes that the administrative license is a substantive requirement for the validity of mixed marriages.

Keywords: Procedural protection, administrative procedure, customary mixed marriage, validity period, legal requirements.

الملخص:

يُعرّف الزواج المختلط بأنه اتحاد بين شخصين من جنسيتين مختلفتين، وهو يتطلب لصحته توافر شروط موضوعية وأخرى شكلية. غير أن هذه الشروط وحدها لا تكفي، إذ يشترط قبل إبرام هذا النوع من الزواج الحصول على ترخيص إداري مسبق من الجهات المختصة. ولا يُمنح هذا الترخيص إلا بعد استيفاء متطلبات قانونية محددة، كما تكون له مدة صلاحية محدودة. ويتربط على عدم الحصول عليه آثار قانونية متعددة، تختلف باختلاف ما إذا كان الإشكال يثار في مرحلة تسجيل الزواج، أم بعد الدخول في زواج دون تسجيل نتيجة عدم الامتثال للإجراءات القانونية.

وتخلص الدراسة إلى أن الترخيص الإداري يُعد شرطًا موضوعيًا لصحة الزواج المختلط.

♦ Author Sent

Introduction:

Mixed marriages in Algeria, those between partners of different nationalities, raise numerous issues in the field of private international relations. These include questions related to both direct and indirect judicial jurisdiction, legislative competence, and the foreign party's right to enter into such a marriage. Additionally, the matter of an individual's capacity and the legal conditions necessary to conclude the marriage often come into question.

Among these conditions, the prior administrative license stands out as one of the most significant. There is no doubt that any union involving foreigners, or between a foreigner and a national, requires caution due to the potential serious consequences that may arise in the future. Such precautionary measures must therefore be established in advance.

Given the importance of the prior administrative license, several ministerial instructions have addressed it, clarifying its provisions, defining its scope of application, and specifying the situations in which it is required. These instructions also outline the documents necessary for obtaining the license, the procedural steps involved, and the authorities responsible for issuing it.

It is worth noting that the importance of this license extends beyond the mere conclusion of a mixed marriage contract. Its absence produces severe repercussions, not only for the parties involved and any children born from such a union but also for public order and the security of society as a whole.

Accordingly, this study aims to provide a comprehensive understanding of the following key question:

➤ **To what extent have the provisions governing the prior administrative license been regulated, and how do they affect mixed marriages?**

To answer this, the research adopts a descriptive approach to define and illustrate the core issue, combined with an analytical method to interpret the relevant legal and judicial provisions.

This analysis follows a two-part structure:

- The first section examines the rules governing the prior administrative license in mixed marriages.
- The second discusses the legal consequences of violating the provisions outlined in the two ministerial instructions that regulate it.

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I. The Provisions Governing the Prior Administrative License in Mixed Marriages:

The prior administrative license is an administrative measure established specifically to protect both national interests and the rights of the individuals entering into a mixed marriage. Due to its importance, it is essential to examine the legal basis regulating it and the situations in which it must be obtained.

I.1 The Legal Basis of the Prior Administrative License:

The prior administrative license in mixed marriages is part of the regulatory framework designed to ensure compliance with national laws and regulations governing marriage. It is a purely administrative procedure that must be completed before the marriage takes place and is issued by the regionally competent Wali (Governor). Therefore, it functions as a preliminary requirement and does not apply to any post-marriage stages. Moreover, it does not constitute a marriage contract in itself and can only be used for the specific legal purpose for which it was granted.

The requirement was first introduced under Article 73(4) of Ordinance No. 70–20, relating to Civil Status in Algeria¹, as amended and supplemented. The article stipulates that the marriage contract, drawn up by a civil status officer or notary, must expressly state that it was concluded in accordance with the conditions prescribed by law, and must mention the authorization to marry when required by law.

It is observed that Article 73(4) of the Civil Status Law was drafted in a general and concise manner. It merely required verification of the existence of the necessary authorization without further elaboration. This situation persisted for ten years until the issuance of Ministerial Circular No. 02, dated February 11, 1980, by the Minister of Interior and Local Communities.

This circular—addressed to the Walis and the Directors General of National Security—dealt specifically with the prior administrative license required for concluding marriages involving foreigners in Algeria². It served to clarify, interpret, and determine how to apply the aforementioned article,

¹ Order No. 70/20 of 13 Dhu al-Hijjah 1389 (corresponding to 19 February 1970), expedited and supplemented by Law No. 14/08 of 13 Shawwal 1435 (corresponding to 9 August 2014), Official Gazette No. 49, issued on 20 August 2014, as amended and supplemented by Law No. 17-03 of 11 Rabi' al-Thani 1438 (corresponding to 10 January 2017), Official Gazette No. 02, issued on 11 January 2017.

² Abdelaziz Saad, *The Civil Status System in Algeria: The Legislation Governing the Civil Status System between 1882 and 1982*, Vol. III, Houma Publishing House, 2011, p. 223.

emphasizing the necessity of obtaining the prior administrative license for any mixed marriage registered by an Algerian civil status officer.

Thus, this ministerial circular is considered an interpretative and implementing text for Article 73 of the Civil Status Law, forming an integral part of its practical application.

Furthermore, Article 31 of the Algerian Family Code¹ stipulates that marriages between Algerian nationals and foreigners are subject to specific regulatory provisions. Although it does not explicitly mention the prior administrative license, judges frequently rely on this article to either support or reject the validation of customary mixed marriages concluded without obtaining the required license.

Authorization also finds its legal foundation in Ministerial Instruction No. 09, issued on November 5, 2018, concerning the regulation of the issuance of mixed marriage licenses. This instruction was promulgated by the Minister of Interior, Local Authorities, and Territorial Planning, more than thirty-eight years after the issuance of the first directive.

This more recent instruction is clear, precise, and comprehensive, addressing numerous aspects that differ in content from those set forth in Instruction No. 02 of 1980. It outlines in detail:

- The conditions that must be met to obtain a mixed marriage license,
- The procedures to be followed when applying for it,
- The documents required for the application file, and
- The administrative steps to be taken for its issuance.

Through these detailed provisions, the 2018 instruction modernized and systematized the administrative framework governing mixed marriages, ensuring both legal uniformity and greater administrative transparency.

I.2 Cases Requiring the Prior Administrative License:

By referring to Ministerial Instruction No. 02, it appears that there are three types of mixed marriage contracts that require obtaining a prior administrative license. However, Instruction No. 09 later refined and reorganized the rules regarding such licenses, focusing primarily on marriages between nationals and foreigners.

Given the importance of this issue, the discussion is divided into two parts:

❖ Part One: Marriage between foreigners

¹ Order No. 05-02 of 27 February 2005, amending Law No. 84-11 of 9 June 1984 on the Family Code, Official Gazette No. 15, issued on 27 February 2005.

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❖ Part Two: Marriage between a national and a foreigner

I.1.1 Requirements for Obtaining the License in Marriages Between Foreigners

Instruction No. 02 addresses, in paragraphs (A) and (B), the requirements for obtaining a prior administrative license when both future spouses are foreigners. The instruction distinguishes between two cases, using residency status as the main criterion:

1. When both foreigners hold residence permits in Algeria.
2. When only one of the two foreigners reside in Algeria, while the other does not.

In the first case, where both foreign spouses have residence permits, the instruction requires that they submit a signed application to the official in charge of the Foreigners' Affairs Office at the relevant Wilaya (province). This application must include:

- The residence permit number,
- The date of issue, and
- The authority that granted the permits.

In the **second case**, where only one of the spouses holds a residence permit, the application must also be submitted to the competent authority as in the first case. However, it must be accompanied by the residence card of the foreign spouse residing in Algeria, along with other documents required by law.

Once the application is complete, the file is referred to the relevant security services, which conduct an investigation into the non-resident foreign party. The purpose of this inquiry is to determine the applicant's background, reliability, and potential impact on Algerian national security.

After completing the investigation, the security services issue a detailed report expressing their opinion. If the report is unfavorable, it must be supported by clear justification, as this becomes the legal basis for the Wali's (Governor's) decision to refuse the license.

From these requirements, it becomes evident that the process is stricter in the second case compared to the first. When both spouses reside legally in Algeria, only a written application with their residence details is needed. However, when one party resides abroad, an additional security investigation is mandated.

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This heightened level of scrutiny reflects the Algerian State's protective approach—aimed at preserving national interests, ensuring the security and stability of the country, and preventing the infiltration of undesirable elements through the institution of marriage.

I.1.2 Requirements for Obtaining the Prior Administrative License in Marriages Involving an Algerian National

The third paragraph of Ministerial Instruction No. 02 outlines the requirements for obtaining the prior administrative license in cases where one of the future spouses is an Algerian national and the other is a foreigner¹. This same issue was addressed in greater detail by Instruction No. 09, with the explicit aim of preserving Algeria's stability, national unity, security, and territorial integrity from any foreign element that might threaten its foundational values or social order.

The growing number of mixed marriages makes this requirement increasingly essential between Algerian nationals and foreigners, largely driven by digital globalization and the widespread use of the internet. Such marriages can potentially lead to situations involving unlawful residence, acquisition of Algerian nationality, and access to rights reserved for nationals, which prompted the authorities to tighten administrative controls.

I.1.1.1 Application Procedures for the License

According to Instruction No. 09, applicants must complete a specific form for the mixed marriage license, which can be obtained either from the local administration—specifically, the Foreigners' Affairs Office (Service for the Movement of Persons), or downloaded from the official website of the Ministry of Interior and Local Authorities.

This digital procedure reflects the Ministry's effort to modernize and digitize public administration, making it easier for citizens by saving time, reducing travel, and relieving pressure on administrative offices.

The license request must then be submitted in person by both parties—or by one of them acting through a power of attorney, no later than three months before the intended marriage date. Upon submission, a receipt is issued to one of the parties.

- If the foreigner resides in Algeria, the request is filed at the Foreigners' Affairs Office in the province of the foreigner's residence.

¹ Maïza Issa, "The Administrative Authorization for the Marriage of Algerians to Foreigners in Light of the Jurisprudence of the Supreme Court," *Journal of Law and Society*, Vol. 7, No. 2, 2019, p. 367.

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- If the foreigner lives abroad, the application is filed in the province of the Algerian national's residence.

The three-month period begins on the date the file is officially submitted, allowing the administration to perform necessary verifications and coordinate with the relevant agencies.

1.1.1.2 Conditions Required for the Foreign Applicant

Under Instruction No. 09, several conditions must be fulfilled by the foreign party before the license can be issued:

- The foreigner must be in a legal residence situation within Algerian territory, either:¹
 - with a valid residence card, or
 - with a temporary residence permit, or
 - holding a valid entry visa or passport (for nationals of countries exempt from visa requirements).
- The foreigner must demonstrate legal capacity to marry², proven through an official document issued by his/her diplomatic or consular representation in Algeria (or the competent authority in the home country). This certificate must include:
 - full name, surname, date of birth, religion, and marital status.

If the country of the foreign spouse does not issue such a certificate, any equivalent official document may be accepted.

This requirement ensures that the marriage is not prohibited by the foreign spouse's national law, particularly concerning monogamy in states that forbid polygamy.

¹ A foreign resident may obtain a short-term residence card valid for two years, renewable upon presentation of supporting documents, or a long-term residence card valid for **ten years**. The latter is granted to a foreign national who proves continuous and lawful residence in the national territory for seven years or more, as well as to his children living with him who have reached the age of eighteen. This is governed by Law **No. 08-11 of 21** Jumada al-Thani 1429 (corresponding to 25 June 2008) concerning the conditions of entry, residence, and movement of foreigners in Algeria, *Official Gazette No. 36*, issued on 2 July 2008. For further details, see: Zrouti Tayeb, *Studies in Algerian Private International Law*, Houma Publishing House, Algiers, 2011, p. 370 et seq.

It is worth noting that obtaining a residence card requires an in-depth and thorough investigation conducted by the security services of the applicant's place of residence. The foreigner must personally appear before these services to obtain and submit the application form along with the necessary documents. Upon submission, the applicant receives a receipt valid for three months, renewable until the residence card is issued; this receipt provisionally substitutes the card. After completing the investigation, the **local** security services forward the full file, along with their opinion, to the Directorate General of National Security, which in turn transmits it to the Department of Movement of Persons (Foreigners' Office) for the issuance of the residence card.

Once issued, the card is sent back to the security service that conducted the investigation, which is responsible for delivering it to the applicant. See: Ben Abida Abdelhafid, *Nationality and the Status of Foreigners in Algerian Jurisprudence and Legislation*, Houma Publishing House, Algiers, 2005, p. 238.

²The **Certificate of Capacity to Marry** in Algeria is available on the official website of the **Ministry of the Interior, Local Authorities, and Regional Planning**: <http://interieur.gov.dz>

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The marriage must comply with Algerian legal and religious rules, particularly the last paragraph of Article 30 of the Family Code, which forbids marriage between a Muslim woman and a non-Muslim man¹. Therefore, an Algerian Muslim woman wishing to marry a foreigner must provide:

- a certificate proving the foreign spouse's adherence to Islam, or
- a certificate of conversion to Islam, issued by the Directorate of Mosque Affairs and Religious Activities, as per Article 02 of Executive Decree No. 2000-156.²

The Supreme Court has ruled that a certificate issued by the Ministry of Religious Affairs is sufficient proof of the foreign spouse's conversion.

1.1.1.3 Safeguarding Public Order and Preventing Legal Fraud

To prevent abuse, Instruction No. 09 ³ explicitly forbids any attempt by one or both parties to circumvent the law governing mixed marriages for ulterior motives—such as:

- obtaining a residence permit,
- acquiring Algerian nationality, or
- enabling another person to acquire it unlawfully.

Since Article 9 bis of the Nationality Code makes mixed marriage a valid ground for nationality acquisition, such fraudulent marriages—so-called “white marriages”—are criminalized under Article 48 of Law No. 08-11, which punishes offenders with two to five years of imprisonment and a fine between 50,000 and 500,000 DZD.⁴

Moreover, the authorities must ensure that both parties respect social cohesion, national security, and public order. The foreign party must provide a criminal record certificate from their home country, duly authenticated by their diplomatic or consular mission and translated into Arabic, in compliance with Law No. 91-05 on the generalization of the Arabic language.⁵

¹ Paragraph C/3 of Ministerial Instruction No. 2 of 1980, as cited by Abdelaziz Saad, op. cit., p. 225.

² Executive Decree No. 2000-156 of 28 June 2000, establishing the Central Administration of the Ministry of Religious Affairs.

³ Ordinance No. 05-01 of 18 Muharram 1426 (corresponding to 27 February 2005), amending and supplementing Ordinance No. 70-86 of 17 Shawwal 1390 (corresponding to 15 December 1970) concerning the Algerian Nationality Code, *Official Gazette No. 15*, issued on 27 February 2005.

⁴ Article 48 of Law No. 08-11, previously cited.

⁵ Law No. 91-05 of 30 Jumada al-Thani 1411 (corresponding to 16 January 1991) concerning the generalization of the use of the Arabic language, *Official Gazette No. 3*, issued on 30 Jumada al-Thani 1411, as amended and supplemented by Ordinance No. 96-30 of 10 Sha'ban 1417 (corresponding to 21 December 1996), *Official Gazette No. 81*, issued on 11 Sha'ban 1417.

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Security services also conduct a thorough investigation into both partners to verify their intentions and the legitimacy of their union.

I.1.1.4 Administrative Review and Decision-Making

Once the file is received, the Foreigners' Affairs Office checks its completeness.

- If incomplete, the file is rejected immediately.
- If complete, it is forwarded to the competent security services within ten days, which then conduct their investigation.

The investigation includes:

- interviews with both partners,
- examination of the foreigner's criminal record, financial stability, and social standing,
- verification of any prior marriage with an Algerian national, and assessment of age compatibility and genuine marital intent.

If the security report is negative—due to security threats, prior criminal history, or ties to extremist groups—the Wali (Governor) may reject the application.

The Wali holds broad discretionary authority in granting or denying the license, based on the final security assessment. He must decide within 15 days before the end of the three-month investigation period.

If no decision is issued within this timeframe (for example, due to pending security checks), the Wali is empowered to grant or deny the license directly, with a written justification.

I.1.1.5 Issuance, Validity, and Registration

When approved, the Foreigners' Affairs Office issues the prior administrative license, which includes:

- the license number,
- date of issuance, and
- the identity of both parties.

The license is delivered personally to the couple, who must conclude and register their marriage within one year from the issuance date.

If they fail to do so within this period, the license expires automatically and is deemed null and void. A new application must then be submitted.

I.1.1.6 Circumventing Administrative Procedures

Because of the length and potential rejection of the administrative process, some couples turn to foreign embassies or consulates to conclude their marriage there. These are considered foreign marriage contracts, which can only be recognized in Algeria through exequatur procedures—that is, obtaining judicial enforcement from the court of the Court of Appeal where the Algerian party resides, in accordance with Articles 606 and 607 of the Code of Civil and Administrative Procedure.¹

Once recognized, the marriage is registered with the Civil Status Office. However, Algerian courts often treat such requests as actions to establish a customary mixed marriage, requiring verification of compliance with Algerian law before officially recording it.

II. Legal Consequences of Violating the Prior Administrative License Requirement:

Failure to comply with the requirement of obtaining a prior administrative license before concluding a mixed marriage produces distinct legal effects, depending on the stage at which the violation occurs. The consequences differ between:

1. Submitting a request to register the marriage without the license, and
2. Consummating the marriage without registration due to the absence of the license, which raises the issue of validating customary mixed marriages.

II.1 The Effect of Failing to Obtain the License at the Stage of Marriage Registration:

Failure to present the prior administrative license at the registration stage of a mixed marriage prevents the continuation of the registration process. This is explicitly established by Article 73(4) of the Civil Status Code, which requires that the civil status officer or notary overseeing the marriage verify that all legal conditions have been fulfilled, including the authorization required by law, when applicable.

This obligation is reaffirmed in both ministerial instructions, which emphasize that no mixed marriage may be registered in Algeria without prior administrative authorization.

¹ Law No. 08-09 of 18 Safar 1429 (corresponding to 25 February 2008) establishing the Code of Civil and Administrative Procedure, Official Gazette No. 21, issued on 23 April 2008, as amended and supplemented by Law No. 22-13 of 13 Dhu al-Hijjah 1443 (corresponding to 12 July 2022), Official Gazette No. 48, issued on 17 July 2022.

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To ensure strict compliance with the Civil Status Code, including Article 73(4), Article 26 of the same law further obliges the civil status officer to verify that all procedures and licenses required by law have been duly met before recording the marriage contract. The officer performs this duty under his personal responsibility and under the supervision of the Public Prosecutor.¹

If the civil status officer fails to ensure compliance—such as by neglecting to verify the required parental consent, authorization, or administrative license—he becomes criminally liable under Article 441 of the Penal Code²

This article provides for the following penalties:

1. Imprisonment ranging from 10 days to 2 months, and/or
2. A fine ranging from 100 to 1,000 Algerian dinars.

Thus, the absence of the license at the registration stage not only invalidates the registration process but also exposes the responsible public official to criminal prosecution for negligence in performing his duties.

II.2 Legal Consequences of Consummation Without Registration in a Mixed Marriage:

In some cases, the parties may proceed with the conclusion or consummation of a mixed marriage without first obtaining the required administrative license from the competent authorities. This can occur either:

1. due to ignorance of the applicable legal procedures, or
2. as a result of intentional circumvention of the law.

Such situations raise the legal question of whether the mixed marriage can later be validated or recognized by Algerian courts as a customary mixed marriage.

To clarify this issue, it is necessary to:

- Examine the judicial position on the recognition and validation of mixed marriages concluded without administrative authorization (Part One), and
- Assess and evaluate this judicial stance in light of the objectives of Algerian public policy (Part Two).

¹Belhaj Al-Arabi, “The Medical Certificate Prior to Marriage in Light of the New Family Code”, Supreme Court Journal, Supreme Court of Algeria, No. 1, 2007, p. 212.

²Law No. 82-04 of 19 Rabi ‘al-Thani 1402 (corresponding to 13 February 1982) amending and supplementing Ordinance No. 66-156 of 18 Safar 1386 (corresponding to 8 June 1966) establishing the Penal Code, *Official Gazette* No. 7, 19th year, issued on 16 February 1982.

II.2.1 The Position of Judicial Authorities Regarding Unregistered (Customary) Mixed Marriages.

Customary mixed marriage raises numerous legal and practical issues, particularly when such a union results in pregnancy or children. Despite the seriousness of these situations, the Algerian legislator has not provided a clear legal framework to address this matter—neither in the Family Code nor in the ministerial circulars regulating the administrative license for mixed marriages.

In light of this legislative gap, the Ministry of Interior, Local Authorities and Territorial Planning issued an explicit clarification directing foreign affairs administrative offices to refer parties involved in unlicensed mixed marriages to the competent judicial authorities, since such cases fall under the exclusive jurisdiction of the courts rather than administrative bodies. This referral must be documented in an official report prepared by the territorially competent security services.

II.2.1.1 The Judicial Trend Supporting the Recognition of Customary Mixed Marriage

The first judicial trend recognizes the possibility of validating customary mixed marriages, relying on Article 22 of the Algerian Family Code-, which allows the court to validate a customary marriage if all its legal and religious conditions are met.

This interpretation considers the article general in scope, applying both to marriages between Algerian nationals and those involving foreigners.

According to this view, the absence of the administrative license does not affect the validity of the marriage, since it is merely a regulatory formality related to registration, not a substantive condition for the conclusion of the contract.

This position was adopted in several first-instance court rulings, such as:

- a. The Family Division of the M'sila Court in a judgment dated March 18, 2018, which validated a customary mixed marriage between an Algerian woman and an Egyptian man, particularly given that the wife was pregnant. The court also ordered the civil registrar to record the marriage in the official registers and note it on both parties' birth certificates.¹
- b. A similar ruling was issued by the same court on June 23, 2019, involving a marriage between an Algerian woman and a French citizen.

¹M'sila Court Judgment, Family Affairs Division, dated May 25, 2022, case filed under No. 00850/22, indexed under No. 01672/22.

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It is notable that these judgments relied solely on Article 22 of the Family Code, without referencing Article 13 of the Civil Code, which subjects mixed marriages to Algerian law, including the provisions of the Family Code.

II.2.1.2 The Judicial Trend Rejecting the Recognition of Customary Mixed Marriage

Conversely, the majority of Algerian courts, including the Supreme Court, have adopted an opposite position—rejecting the recognition of customary mixed marriages that lack the prior administrative license required under Article 31 of the Family Code.

This article stipulates that marriages between Algerian men or women and foreign nationals are subject to regulatory requirements, the most important of which is obtaining prior administrative authorization.

According to this interpretation, the administrative license is not a mere formal procedure, but a substantive condition for the validity of the marriage itself. Its absence therefore renders the marriage invalid and non-recognizable by the courts.

This position is reflected in numerous judgments, including:

- a. A decision of the Family Division of the Ain El Melh Court (M'sila Judicial Council) dated March 22, 2020, which refused to recognize a customary marriage between an Algerian woman and a French national, despite the existence of a child, citing the absence of the required administrative authorization.
- b. Another ruling from the M'sila Court on May 29, 2022, also rejected the validation request due to the lack of the administrative license, describing it as a mandatory legal requirement.¹

At the appellate level, family chambers within judicial councils confirmed this stance.

For example, the Family Chamber of the M'sila Judicial Council:

- On June 18, 2018, overturned the lower court's ruling of March 18, 2018 and dismissed the case, citing a violation of Article 31 of the Family Code.
- On October 21, 2019, it overturned another ruling issued on June 23, 2019, and again rejected the claim, following an appeal by the Public

¹ M'sila Court Judgment, Family Affairs Division, dated May 25, 2022, case filed under No. 00850/22, indexed under No. 01672/22.

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Prosecutor, who is considered a principal party in cases involving the application of family law.

II.2.1.3 The Position of the Supreme Court

The Algerian Supreme Court has consistently upheld this restrictive interpretation since 2016, as demonstrated in several landmark decisions:

- a. Decision of February 3, 2016:¹ “Validating a customary marriage between two parties of different nationalities without compliance with the applicable regulatory requirements constitutes a violation of the law.”
- b. Decision of July 13, 2016:² “The regulatory provisions governing marriages between Algerians and foreigners require obtaining administrative authorization, both for registration and for judicial recognition.”
- c. Decision of December 7, 2016³: “A customary marriage between an Algerian woman and a foreign man cannot be validated without prior administrative authorization. Recognition without such authorization constitutes a breach of the law.”

A review of the various judicial rulings reveals that the prevailing and settled jurisprudence in Algeria today is to refuse judicial validation of unlicensed customary mixed marriages.

The administrative license is viewed as a substantive legal prerequisite for the formation of a valid mixed marriage, not merely a procedural formality.

This judicial approach reflects a deliberate effort to safeguard national security, social cohesion, and public order, while curbing potential abuses of mixed marriage regulations—particularly those aimed at obtaining residence or citizenship fraudulently.

II.2.2 Evaluation of Judicial Decisions Concerning Customary Mixed Marriage

An examination of the jurisprudence of the Algerian Supreme Court and the rulings of lower courts rejecting the validation of customary mixed marriages reveals that these decisions are primarily based on Article 31 of the Family Code.

This article subjects’ marriages between Algerian men or women and foreign nationals to regulatory provisions, which, in principle, should be set

¹ Supreme Court Decision dated February 3, 2016, under No. 0942668, *Supreme Court Journal*, Issue 1, 2016.

² Supreme Court Decision dated July 13, 2016, under No. 1005800, *Supreme Court Journal*, Issue 2, 2016.

³ Supreme Court Decision dated December 7, 2016, under No. 1028971, *Supreme Court Journal*, Issue 2, 2016.

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out in a detailed executive decree enacted by the executive authority to implement legislation adopted by the legislative authority.¹

However, no such executive decree has yet been issued, leaving a legislative and procedural gap in the application of this rule.

II.2.1.1 Logical and Legal Assessment of the Judicial Reasoning

The reliance of judicial authorities on the absence of the prior administrative license as a ground for refusing to validate a customary mixed marriage appears, from a legal and procedural standpoint, inconsistent and illogical.

According to Ministerial Circulars No. 2 (1980) and No. 9 (2018), the administrative license is a preliminary requirement that must be obtained before the registration of the marriage, not before its validation by the courts.

In other words, the license serves as an administrative safeguard, not a condition of judicial recognition. It is important to note that these circulars were issued by the Ministry of Interior and addressed specifically to governors and directors-general of national security, not to judges.

Their purpose is to regulate and monitor the residence status of foreigners in Algeria, ensuring that the presence of foreign nationals married to Algerian citizens remains under administrative control.²

This approach aligns with Article 32 of Law No. 08-11, which regulates the expulsion procedure in cases where a foreign national marries an Algerian citizen, or where a foreign father or mother of a minor Algerian child resides in Algeria.

Hence, the administrative license functions as a tool of migration control and public order, not as a determinant of the existence or validity of the marriage contract itself.

II.2.1.2 The Need for Judicial Balance and Legislative Clarification

Given the divergent positions among Algerian courts—some validating and others rejecting customary mixed marriages—and the serious social consequences arising from both approaches, there is an urgent need for a balanced judicial stance that reconciles public order considerations with the protection of individual and family rights.

¹ Mohamed Saïd Jafour, *Introduction to Legal Sciences*, Vol. 1: The Abridged Theory of Law, 19th edition, Houma Publishing House, Algeria, 1999, p.162.

² Abdelaziz Saad, *Op. cit.*, p.224.

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Two opposing outcomes currently emerge from judicial practice:

- a. Recognition of certain customary mixed marriages—which, in some cases, may conflict with religious and public order principles, such as when a Muslim woman marries a non-Muslim man.
- b. Rejection of all unlicensed mixed marriages—which, while safeguarding national and religious values, may lead to severe harm to the rights of children born from such unions and to the legal status of the spouses.

Therefore, it becomes necessary for judges to adopt a measured and context-sensitive approach, guided by two fundamental considerations:

- a. Preserving the essential values of Algerian society and ensuring the protection of national security and public order;
- b. Safeguarding the legitimate interests of the spouses and children, especially when the marriage does not pose a threat to the State or its core social values.

In practical terms, this means:

- a. Rejecting validation of mixed customary marriages contrary to public order, such as a marriage between a Muslim Algerian woman and a non-Muslim foreigner;
- b. Allowing validation in cases where the marriage does not endanger national interests or public security, in order to protect the legal status of the parties and preserve the rights of children born from such unions.

II.2.1.3 Concluding Observation

This proposed approach remains subject to further consideration, given the complex political, social, economic, and diplomatic dimensions that shape Algeria's legal framework regarding foreign nationals.

Ultimately, achieving a comprehensive and coherent legal solution requires both judicial prudence and legislative intervention, particularly through the promulgation of a detailed executive decree clarifying the scope and application of Article 31 of the Family Code.

Conclusion:

From the foregoing analysis, it is evident that the Algerian legislator has attached great importance to mixed marriage, not only by defining the applicable law governing its substantive and formal requirements, but also by mandating the prior administrative license as a precondition for the validity of such unions.

Prior Administrative License in Mixed Marriages under Algerian Law

This license constitutes a purely administrative procedure that must be obtained before the marriage takes place. Recognizing its critical importance, the legislator has clearly identified the competent authority responsible for issuing it, as well as the legal and procedural requirements necessary for its issuance, including its period of validity.

All these measures reflect the legislator's determination to safeguard national interests and preserve state security.

The significance of this license becomes even clearer when examining the legal effects arising from both the registration and non-registration of a mixed marriage.

A marriage cannot be registered without the presentation of this license, and the parties cannot seek judicial recognition of the marriage if it was consummated without obtaining the required authorization.

Accordingly, the study concludes with the following recommendations:

1. Mandatory acquisition of the prior administrative license before the celebration of any mixed marriage.
2. Avoiding legislative ambiguity by enacting specific regulatory provisions governing the marriage of Algerian nationals with foreigners, or by explicitly incorporating the requirement of the prior administrative license into the Family Code.
3. Amending Article 22 of the Algerian Family Code to include a provision stating that a marriage cannot be registered or validated by judicial authorities without the prior administrative license, except in cases consistent with Islamic law and aimed at protecting the rights of the child.

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