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The Supreme Court's Exercise of Judicial Review over Foreign Marriage

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Abstract:

Foreign or mixed marriage raises numerous legal issues, foremost among them the extent to which it is subject to the Supreme Court's supervision with regard to the trial judge's application of the law. Scholarly opinions have diverged on whether the Supreme Court exercises such supervision, depending on how different legal systems perceive foreign law itself—whether it is regarded as a matter of fact or as law.

Keywords:

Foreign marriage, Supreme Court, judicial review.

introduction :

The issue of the Supreme Court's oversight of foreign marriages is of paramount importance in Algerian law, given the legal issues this type of marriage raises affecting public order, the family, and society, especially in light of differing nationalities and conflicting laws. The Algerian legislator has given special attention to regulating foreign marriages through the Family Code and the rules of private international law.

The importance of this topic lies in its close connection to protecting the family as the fundamental unit of society. Its significance is further underscored by the role of the Supreme Court in overseeing the proper application of family law provisions and rules of private international law, as well as preventing fraud and ensuring respect for the formal and substantive rules of foreign marriage. This fosters legal stability and protects rights. Therefore, we pose the following question: What is the nature of the Supreme Court's oversight of foreign marriages? Is it limited to legal review, or does it extend to the facts and procedures? Accordingly, we have divided this research into two sections: the first section addresses mixed marriages and conflicts of law, while the second section examines the jurisdiction of foreign law in matters of mixed marriage before national courts.

First topic : Mixed marriages and conflict of laws

The problem of conflict of laws in the field of marriage arises when the conditions required for a legal conflict in general are met, that is, when the subject of the dispute includes a foreign element due to a difference in the nationality of the parties, the place of its conclusion, the place of its execution, or the location of the money. Here the conflicting laws of one or more countries to govern the relationship become apparent.

requirement : Determining the applicable law for mixed marriages

When it comes to foreign marriage, the elements of the relationship extend beyond the territory of the state to other countries, and thus a conflict arises between legal conflicts, through the application of the legal rules regulating this (the rules of conflict of laws).

First section: The law applicable to substantive conditions

The objective conditions of marriage refer to those conditions upon which the existence of the marriage depends, and whose absence renders the marriage void. They are the essential foundations upon which the marital bond rests, and the validity of its formation depends on their fulfillment. The absence of any of these conditions leads to the annulment of the marriage. Determining what falls under the concept of

objective conditions is a matter of characterization, and characterization is important in the field of conflict of laws. In private international law, characterization means determining the nature of a special relationship involving a foreign party by relating" it to a specific connecting factor, which in turn constitutes an element of the connecting factor rule, so that the applicable law can be determined for that relationship in question, according to the connecting factor rule. Legal scholars¹ have generally subjected characterization to the law of the judge, that is, the law of the state of the judge adjudicating the dispute. This is the approach taken by most legislations, including the Algerian legislator through Article 9 of the Civil Code. The Algerian judge shall be the authority for characterizing the relationships whose nature is to be determined in the conflict of laws to be applied." Positive legislations differ in the objective conditions for the validity of marriage. In comparative law, we find three approaches to determining the applicable law: the law of nationality, the law of domicile, and the law of the place of residence. The first of these is the law of nationality, domicile, and place of residence. The law of the nationality of each spouse is followed by all Arab laws, as well as German, Polish, and Czechoslovakian law. The Hague Convention on the Conflict of Laws in Matters of Marriage adopted this ruling in its first article. The second approach subjects these conditions to the law of the spouses' domicile, including English, Danish, Norwegian and most Latin American laws. The third approach assigns the conditions of marriage to the law of the place where the marriage is concluded, without distinguishing between the form and substance of the marriage. This is the solution adopted in The Algerian legislator adopted² American law and some Latin American countries, the first opinion and subjected it to the nationality of the spouses as a general rule and made an exception to the application of this rule if one of the spouses was Algerian at the time of the marriage.

The second branch: The law that governs the formal requirements of a marriage contract

The term "form" refers to the framework within which the will of the parties is expressed and made known to the outside world, or the mold into which the element of consent in the contract is poured. This varies from one country to another, and the judge, in determining what constitutes a substantive requirement and what constitutes a formal requirement, refers to his own law, in accordance with the general principle of legal characterization, which dictates that such matters be subject to the law of the country where the marriage took place. Some countries have equated marriage with administrative acts in terms of form, subjecting it to the general legal rule governing legal acts. This rule means subjecting the form of marriage to local law, i.e., the law of the country where it was concluded. This is stipulated in the Hague Convention on the Conclusion and Recognition of Marriage, dated March 14, 1978, which entered into force on May 1, 1991. Article 2 of this Convention states that the formal requirements of marriage are subject to the place where it is concluded. The Algerian

legislator adopted this principle in Article 19 of the Civil Code, and Article 71 of the Civil Status Law states: "The civil registrar or the judge within whose jurisdiction the residence of the applicants for marriage is located has jurisdiction over the marriage "...contract

.The second requirement : Applying the law pertaining to mixed marriages

The role of the choice-of-law rule does not end with determining the law applicable to foreign marriage, but rather seeks to apply it in practice. Due to the duality of the choice-of-law rule, it sometimes refers to the application of national law (the judge's law), and sometimes it refers to the application of foreign law. In this case, the judge may encounter some obstacles that prevent its application, which may lead to the .exclusion of the latter from the application of the rule of these questions

.Section One: Obstacles to the application of the relevant foreign law

When the choice-of-law rule in the judge's law indicates the application of a specific foreign law to matters of foreign marriage, the judge must then act in accordance with the substantive rules of the law to which the choice-of-law rule refers. However, the application of this law may conflict with the fundamental principles and foundations upon which the national legal system is based, and legislative jurisdiction may be transferred as a result of the parties circumventing the law through fraud. This is what :we will try to explain through the following

.First: Payment according to the general system

Given the importance of public order in the field of private international relations, all settled on adopting it as a defensive means against³ countries of the world have .foreign laws whose provisions do not conform to the provisions of domestic laws Family relations with a foreign element are considered the most appropriate means . of applying the idea of public order as a way to exclude the applicable foreign law ,This is because family relations, and marriage in particular, are based on religious social, and moral concepts. In addition, these relations are often regulated by mandatory rules, as is the case in the Algerian Family Code. Therefore, the judge must not violate them, even if the national conflict-of-laws rule in his country indicates the jurisdiction of foreign law and the case of a clear conflict between the principles and values on which his legal system is based and the provisions of this law. This conflict is clearly evident between Islamic legal systems and European legal ,systems. In such cases, public order, which operates in the field of conflict of laws intervenes to suspend the application of the foreign law that contains rules that conflict with the legal rules in the judge's law. The idea of public order is considered .the protective function of excluding the application of foreign law

The concept of public order is characterized by ambiguity and complexity, and it is a difficult concept, as it is accepted that whenever it becomes clear to the judge in a country that the application of the law designated by the conflict-of-laws rule conflicts with the fundamental principles and foundations of his society, he must, in this case, exclude this law in the name of public order, which in this case plays the role of the corrector

Second: Deception regarding the law

Section Two : The status of foreign law competent to rule on mixed marriage issues before the national courts

It is generally agreed that the conflict of laws rule is a dual rule, and this is one of its most important characteristics. It may sometimes refer to the application of the national law, i.e., the law of the judge, and sometimes to the application of foreign law. When the conflict of laws rule refers to the application of the judge's law or the national law, there is no issue. However, the problem arises when referring to foreign law. This raises the question of how to treat foreign law in terms of its nature, its evidentiary value, and the Supreme Court's oversight of it. The judge may refrain from applying foreign law because it violates public order, or jurisdiction may be established through fraud. Therefore, in the first section, we will address the treatment of the applicable foreign law in matters of mixed marriages, and in the second section, we will discuss the exclusion of the applicable foreign law

First requirement: The application of the relevant foreign law to matters of mixed marriage

We have already discussed the definition of foreign marriage. In this section, we will try to address the legal nature of the foreign law that is competent to rule on matters of mixed marriage. The first section will address the proof and interpretation of the competent foreign law. The second section will address the proof of the competent foreign law

First branch : The legal nature of the foreign law that is competent to rule on matters of mixed marriage

Determining the nature of applying foreign marriage before national courts when the conflict of laws rule designates the foreign law as the applicable law, we pose the following question: Is it considered a law or merely a legal fact for the judge? Jurisprudential opinions have conflicted on this matter

.First point : The foreign law applicable to mixed marriages is a mere fact

This school of thought denied the legal nature of the applicable foreign law indicated by the national conflict-of-laws rule, considering it merely an element of fact. This

Consequently, the national judge does⁴.view was championed by the jurist Patifol not apply it as a law binding him upon the foreign legislator, since he is only bound by the orders of his own legislator. If the national judge applies foreign law, it is only as a fact, without being able to retain any binding force outside the borders of his .state. The view of foreign law as merely a fact rests on a set of principles

. Applying foreign law on the basis of international comity -1

The Dutch school sees the basis for the application of foreign law as the principle of international comity, which is what the Dutch school is known for as the school of comity. This basis is closer to ethics than to binding law, as long as there is nothing in international law that dictates that the state allow foreign law to extend within its territory. However, the intended comity is the comity of the legislator when setting rules of conflict of laws and choosing appropriate controls for each category of systems. It does not mean the judge's complacency towards foreign law, because , saying so would lead to judges being controlled according to their inclinations allowing its application according to their mood or refusing to allow it in the opposite case. It is assumed that the judge is obligated to apply what is indicated by the national .rules of conflict of laws

.Applying foreign law in respect of acquired rights - 2

,The theory of acquired rights prevailed in the school and in Anglo-Saxon countries and its implication is that the national judge, when applying foreign law, is only recognizing the acquired right under the authority of this law, as if recognizing this law is a recognition of a fact that resulted under its authority for the owner of the right Of course, this theory was criticized .⁵ by means of the national conflict-of-laws rule by jurists for not being comprehensive, because the application of foreign law is not limited to cases of respecting acquired rights, but it must also be applied in the case of creating rights and positions that did not exist before, such as concluding a .⁶ marriage contract

.Applying foreign law on the basis of delegation -3

French jurisprudence, along with German jurisprudence, adopted the idea that foreign law is applied by delegation from the foreign legislator whose national conflict of laws rule chose to apply its law. However, this position clashes with the interpretation of the French judiciary, which makes foreign law an element of fact. In an attempt to reconcile the two opinions, the jurist Batifoul goes so far as to say that foreign law differs from the law of the judge in terms of its publication and in terms of the strength of its enforcement abroad. Nevertheless, the national judge applies it, bound by the ,order of its legislator, through the choice dictated by the national conflict of laws rule .considering it an element of fact and not of law

Second: The consequences of considering foreign law as a mere fact

The consequences of considering foreign law as a mere fact include several results, the most important of which are

The judge cannot apply it on his own initiative, but rather it is necessary for the parties, i.e. the litigants, to adhere to it and raise it explicitly before him

Not applying the rule of ignorance of the law is not an excuse in foreign law, since it is a fact and not a law, and it is logical to adhere to ignorance of it as an acceptable matter

of proof lies with the party that insists on applying foreign law, as it alone proves its content

Inability If the evidence is proven, then the judge is obligated to decide the dispute in accordance with his law, i.e., national law, otherwise he is considered to be denying justice

This adaptation was adopted by the Anglo-Saxon judiciary, which refused to grant the conflict-of-laws rule the status of being mandatory. Its position is based on the fact that there is no need at all to apply this rule because of the assumption of complete correspondence between foreign law and national law. The principle dictates that national law be applied directly to the dispute as long as the two laws are similar. Only the litigants, as the interested parties, can invoke the conflict-of-laws rule if they⁷ prove that the content of the foreign law differs from the provisions of national law

The second clause: The basis for treating the foreign law applicable to marriage as a law

Those who hold this view believe that foreign law retains its legal character. However, a difference has emerged between its supporters and opponents, and they differed on the basic idea of applying foreign law, which we will address by clarifying the difference

First: The basis for treating the foreign law applicable to marriage as a law

The modern Italian school adopted the developments reached by the jurist **Anzilotti** at the beginning of the twentieth century, namely the complete duality of the domestic and international systems. It considered foreign law to be a law of fact and attempted to explain this based on the theory of reception and assimilation. This rule absorbs foreign law, merging it into itself, as if the judge, in applying foreign law, is applying the conflict-of-laws rule of his own law. However this approach is criticized for stripping foreign law of its content, making its interpretation like that of national law. Others argued that the assimilation is merely

such that the foreign rule retains its meaning, components, and foreign⁸ ,formal character, but the judge applies it accordingly. Considering that it has been incorporated into his law, but the flaw in this view is that the judge's law cannot. Therefore, the proponents of the delegation⁹ .accommodate all laws, even formally theory believe that the foreign law retains its foreign character, as it is enforceable by binding force, that is, as an order issued by the foreign legislator based on a delegation or authorization issued by the national legislator. In every case where jurisdiction is established for a foreign law according to the choice-of-law rule, the national legislator relinquishes legislative jurisdiction to the foreign legislator and delegates¹⁰ it to him in legislation regarding the case presented to him

.Second: The consequences of considering foreign law as law

Of course, considering foreign law as law entails a number of consequences, the most :important of which are

The judge before whom the dispute is brought applies foreign law on his own-initiative based on the rule of conflict of laws and is obligated to search for the content .of the foreign law

The Supreme Court has the right to exercise its oversight as a law, as well as to .monitor the judges' interpretation of it and the extent to which they apply foreign law .is not an excuse , as it is unacceptable, just like national law

We observe that the results were the complete opposite of what would occur if the law were considered merely a fact. German jurisprudence adopted this approach at the beginning of the 20th century. The national legislature, by adopting the rules of choice-of-laws, intended to resolve the problem of conflict of laws in private international relations. Therefore, the binding nature of these rules stems from their ,national character, which entails the judge's application of them spontaneously without the need for the parties to invoke them. Similarly, the French Court of 'Cassation ruled on the automatic application of foreign law without the parties¹¹.insistence , as stated in the Rabah decision of October 11, 1988

Third item: The position of positive legislation regarding the nature of the foreign law applicable to marriage

We observe that the French legislator has adopted the mandatory nature of the conflict of laws rule, thus conferring a legal character upon foreign law. There are ,other instances where the legislator deems it necessary to confer a factual character as is evident from the fact that the conflict of laws rule is in force when the case concerns matters of public order. In such cases, the judges are obligated to apply the conflict of laws rule ex officio, as in matters related to the formation of a marriage

and its effects. This was established by the French Court of Cassation in its decision of May 6, 1999. The Court of Cassation had previously determined the mandatory nature of the conflict of laws rule not only if the claimed right is inalienable by the parties, but also if the source of the conflict of laws rule is an international agreement. Conversely, the conflict of laws rule is optional if the case concerns rights that the parties can dispose of. In this case, the judge may, but is not obligated to, raise the conflict of laws rule indicating the jurisdiction of a foreign law unless the parties agree to this. In this case, the conflict of laws rule cannot be applied, and the national law must be applied. Therefore, we conclude that the French judiciary characterizes¹² the law applicable to marriage legally, not as a legal system. The fact that the judge is obligated to apply it ex officio in the Egyptian judiciary is thus addressed, incidentally in a ruling issued by the Egyptian Court of Cassation on November 7, 1960. The court deemed Article 14 of the Egyptian Civil Code to be of public order because its text stipulates the application of national law in matters of personal status that fall under the general order of domestic law. The court did not clarify whether this designation applied to all conflict-of-laws rules as being of public order or whether it stemmed from considerations specific to the text of Article 14.

while the Algerian legislator stipulated through¹³, "Only from the Egyptian Civil Code Article 358 of the Code of Civil and Administrative Procedures, 'An appeal by way of cassation shall only be based on one or more grounds...contravention of the foreign law relating to family law...' Accordingly, we conclude that the Algerian legislator treats the foreign law relating to family law as a law, which entails the effects previously discussed and consequently the oversight of the Supreme Court over it.

.requirement : The applicable law

If it is decided that the law applicable to the conclusion of the marriage and its effects is a foreign law under the national conflict-of-laws rule, several interesting legal issues arise, including who bears the burden of proving the applicable foreign law and what are the methods of proving it.

.Section One: Proving the Applicable Foreign Law

It is not enough for the conflict of laws rule to specify the foreign law applicable to mixed marriage issues; rather, the judge must understand the substance of the substantive rules of the foreign law, which leads us to question how this knowledge¹⁴ of foreign law is formed.

.First item: Burden of proving the applicable foreign law

.Proving foreign law means establishing evidence and clarifying its legal provisions. A judge may encounter difficulties in uncovering these provisions and understanding

their content. Therefore, modern jurisprudence emphasizes that investigating the content of foreign law is an obligation for the judge to assist the litigants. In this scenario, the judge may be familiar with foreign law, as the breadth of judicial knowledge, advancements in legal methodology, the focus on comparative legal studies, and the expansion and dissemination of knowledge make it possible for a judge to be acquainted with foreign law. In this situation, the judge can independently investigate and apply the content of the foreign law, bound only by the principle of due process, which allows the parties to discuss the law's content. Alternatively, the judge may be ignorant of foreign law. In this case, the judge must investigate its content, playing a proactive role in its establishment. The judge can utilize the litigants' efforts and, if necessary, initiate investigative procedures to ascertain the foreign law. Furthermore, the evidence presented by the parties is not binding on the judge if there is doubt about its validity, and the judge may base their assessment on other factors.¹⁵ His personal knowledge of foreign law judge is bound by the burden of proof and cannot shirk his duty to adjudicate the dispute, otherwise he would be considered to be denying justice

The Italian Court of Cassation was the first to adopt the approach of obligating the judge to search for the content of foreign law using all available means, including requesting assistance from the litigants, which is what it concluded in its ruling issued¹⁶ by its plenary session on February 16, 1966

As for the Algerian legislator, he believes that the issue of proving the foreign law relating to family law is the responsibility of the judge before whom the dispute is presented. This is inferred from the text of Article 358 of the Civil and Administrative Procedures Law of 2008, which states that an appeal to the Supreme Court in matters of personal status on the grounds of an error in the application of the foreign law relating to the family implicitly entails the automatic application of the conflict-of-laws rule that refers to a foreign law and obliges the judge to search for the content of the foreign law that should be applied

.Section Two: Methods of proving foreign law

There are no specific systems for proving foreign law, and in principle, all available means of proof are used. The judge has the authority to accept or reject them, although the general principle dictates the judge's freedom in proving the content of foreign law. He may use all scientific means that enable him to ascertain its content. However, jurisprudence and the judiciary in France have settled on excluding confession and oath from the means of proof, even though they are the most commonly used methods for proving facts, and relying on testimony, circumstantial evidence, and other means of knowledge. In practice, the content of foreign law is proven either through a certificate issued by the diplomatic or consular authorities of foreign countries or through a certificate from specialists and experts¹⁷.

issue of proof in Algerian legislation, it is by all means of proof except confession and oath. The reason for excluding them stems from the fact that the judge may not accept the confession of the disputants and their agreement on a specific content of foreign law. His duty is to apply foreign law, not to apply a fictitious law imposed by It is clear that the Algerian legislator followed the French .¹⁸ the will of the disputants .law with regard to the means of proof

When it is impossible to prove the foreign law, the judge must decide the dispute on the basis that this obligation which falls on him at the domestic level imposes with the same force at the level of the special international relationship, and the national law is applied here as a subsidiary jurisdiction after it is impossible to prove the This is what the ¹⁹.foreign law with original jurisdiction to rule the dispute at hand Algerian legislator has adopted in the text of Article 23 bis of the Civil Code, Law No. 05-10 amending and supplementing the Civil Code, which states: “The Algerian law shall be applied if it is impossible to prove the applicable law. ” If it is impossible for the Algerian judge before whom the dispute is brought to establish the law in the preceding article, he shall apply the Algerian law relating to the family and apply its provisions, whether regarding the establishment of the relationship, its effects, or its .dissolution

.Section Two: Interpretation of Foreign Law

If the foreign law applicable to matters of foreign marriage is established, the judge must apply it to the dispute before him. However, this stage is fraught with two problems: firstly, the interpretation of the foreign law, and secondly, the oversight of .the Supreme Court. These are the issues we will address

.Firstly: The role of the judge in interpreting foreign law

When a judge is able to identify the foreign law applicable to matters of mixed marriage and proves its content, he applies it in the manner and form in which it is applied before the courts of the state that legislated it, bound by the judicial solutions Some .²⁰ and general principles governing the interpretation of the law in that state argue that the judge's role in interpreting foreign law is no different from his role in interpreting his own law. In both cases, he seeks the legislator's intent and the objective behind the rules he issued, striving to uphold the principles of justice according to the prevailing concepts in a state governed by the rule of law. While a judge may consult prevailing opinions in foreign jurisprudence and case law when interpreting foreign laws, he is not obligated to adopt them. If he rules justly, he does ,so in the name of the state to which he belongs and under its responsibility. However this view is subject to criticism because the wisdom of legislation dictates that the judge adhere to established judicial solutions in the state whose law he applies, even To argue otherwise²¹ .if the judiciary there is not an official source of legal rules would be a deviation from the principle of choice of law and would give foreign law

a meaning it does not possess, potentially leading to its distorted application. This would contradict not only the will of the foreign legislator who enacted the law but also the will of the legislator through the principle of conflict of laws, which stipulates that foreign law should be applied according to the meaning established in the state. Therefore, the judge must follow a certain approach. The .²² that enacted it interpretation adopted by foreign courts and the avoidance of personal interpretation requires the application of foreign law as it is applied in its country of origin, taking into account not only the texts of its laws but also what has been established by its jurisprudence. As a result, the judge is not bound by the interpretation that the ²³.litigants may adhere to regarding the meaning of foreign law

.Second: The Court of Law's oversight of the interpretation of foreign law

An error in applying the conflict-of-laws rule is subject to review by the Supreme Court because it constitutes an error in applying national law. For example, an Algerian judge might apply the law of domicile to the formation of a marriage or its effects instead of the law of nationality, which is the law adopted by the national conflict-of-laws rule. However, errors in interpreting foreign law are a point of contention in comparative law regarding whether they are subject to Supreme Court review. Some countries, such as Belgium, the Netherlands, Switzerland, and most European courts, refuse to extend Supreme Court review to the interpretations given by lower court judges. This is based on the premise that the foreign law is consistent with their own jurisprudence and that the Supreme Court's role is to unify national case law, a task it finds practically difficult to undertake with regard to diverse foreign .However, this position, while attempting to alleviate the burden on the judge .²⁴ laws is ultimately undesirable. It allows lower court judges to interpret foreign law according to their own whims, confident that their rulings are beyond the reach of the ²⁵.Supreme Court

:conclusion

Examining the Supreme Court's oversight of foreign marriages highlights the importance of this legal and social issue, as it represents a point of convergence between national law and the rules of private international law. It reflects the Algerian judiciary's commitment to protecting public order and the rights of the parties involved. Perhaps what best illustrates this is that the Algerian legislator treats foreign law as law itself, not as a fact, thus subjecting judges' rulings on this matter to the Supreme Court's review of the extent to which the law is applied. Among the findings :are the following

- Foreign or mixed marriages are of great importance in Algerian legislation .because they relate to matters of public order that it seeks to protect

- It became clear that the Supreme Court exercises its oversight over the substantive and procedural matters of foreign marriage and treats it as national law, based on the idea of treating foreign law as a law, not a fact, as some other legislations have treated it
- The exercise of judicial oversight by the Supreme Court constitutes the enforcement of state sovereignty over its laws and the proper application of the conflict-of-laws rule

:Therefore, some suggestions that can be made are as follows

- Strengthening the Supreme Court's oversight role by specializing judges in private international law to ensure the quality of judgments and the standardization of judicial interpretation
- The need to train judges in private international law through organizing study days with the participation of university professors to enhance their legal and judicial training, or national and international conferences that would promote scientific cooperation
- Interest in private international law in general, and in private international law concerning foreign marriage in particular, stems from its importance and close connection to public order and the nature of societies, especially Arab and Islamic ones

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- ⁴ ,Amina Rahawi, Rahawi, Mixed Marriage in Private International Law, Master 's Thesis, Faculty of Law-Abou Bekr Belkaid University, Tlemcen, 2010/2011, p. 57
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- ⁸ Muhammad Kamal Fahmy, p. 476-
- ⁹ Aliouch Qarbou Kamal, previous reference, p. 117-
- ¹⁰ Nadia Fadil, The Application of Foreign Law before National Courts, p. 25-

¹¹ The summary of the Rabah decision is a request to establish the paternity of a child born to an Algerian mother. The conflict of laws rule in French law stipulates the application of the law of the mother's nationality, according to Article 311-14 of the French Civil Code. The lower court judges in this case applied French law. The French Court of Cassation overturned this decision on the grounds that the lower court judges disregarded the application of Algerian law, which is the mother's personal law if she treats the foreign law as her own. The Court of Cassation overturned the decision on the grounds that the lower court judges did not apply the law indicated by the French conflict of laws rule, and considered this a violation of Article 12-1 of the new French Code of Civil Procedure. However, the French judiciary has since reversed its automatic application of foreign law when it concerns rights over which the parties are free to dispose

¹² .Muhammad Walid Al-Masri, p. 222-

¹³ Fouad Abdel Moneim Riad, Samia Rashed, previous reference, pp. 53-54-

¹⁴ ,Abdo Jamil Ghosoub, Lessons in Private International Law, University Foundation for Studies-Publishing and Distribution, First Edition, 2008 , p. 136

¹⁵ .The same reference, p. 139-

¹⁶ .Rahawi Amina, previous reference, p. 67-

¹⁷ Saeed Youssef Al-Bustani, previous reference, 206 Nourieh-

¹⁸ .Abdo Jamil Ghosoub, the previous reference, p. 146-

¹⁹ .Muhammad Walid Al-Masri, previous reference, p. 240-

²⁰ .Okasha Muhammad Abdul Aal, Conflict of Laws, previous reference, p. 406 -

²¹ .Hisham Ali Sadiq, Lessons in Conflict of Laws, previous reference, p. 172-

²² .Okasha Muhammad Abdul Aal, the previous reference, p. 406-

²³ Saeed Youssef Al-Bustani, previous reference, p. 210-

²⁴ Hisham Ali Sadiq, Lessons in Conflict of Laws, previous reference, p. 175-

²⁵ Zerouti Tayeb, Algerian Private International Law, Conflict of Laws, A Comparative Study with Arab-Laws and French Law, previous reference, p. 265