

## CIVIL-STATUS SYSTEMS IN MUSLIM COUNTRIES: THE CASE OF ALGERIA

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"You shall give your adopted children names that preserve their relationship to their genetic parents. This is more equitable in the sight of GOD. If you do not know their parents, then, as your brethren in religion, you shall treat them as members of your family." (Quran 33:5).

"Learn your genealogy and do not be like the Nabateans of Mesopotamia: when queried about their origins, they respond that they come from such and such a village" (Caliph Umar)<sup>2</sup>.

### Introduction

I have been assigned a huge task. The Organisation of the Islamic Conference comprises 57 countries, 22 of which form the Arab League. Furthermore, although all Arab countries have laws relating to civil status, strangely there are very few doctrinal texts that handle civil status. Also, the civil-status system changes from one country to another. For these reasons, and so that the present paper does not end up looking like an arbitrary pick-and-mix, I have decided to limit myself to one country, Algeria. In any case, it is the only Arab country which has a doctrinal work devoted in detail to civil status<sup>3</sup>.

Even though there are traces of civil-status registers in Annabah dating back to 1845, in Arabic language, containing the essential data, it was only through the law of 23 February 1882<sup>4</sup>, issued by the French authorities, that civil status was established for indigenous Muslim Algerians. This law established two registers: one matrix register, and one civil-status register. This law imposed a population census and the registration of the population in each locality, demanding of each Algerian the adoption of a family name, the use of which was obligatory. But this law was not applied everywhere; it was repealed by law 66-307 of 14 October 1966. The latter law was completed by the provisions of the French civil code relating to civil status. All of these laws were replaced with the current Order 70-20 of 19 February 1970 regarding civil status<sup>5</sup> (hereafter: OCS)<sup>6</sup>.

The OCS is divided into five titles:

- 1) Title I. Organisation of the civil-status service: that is to say, civil registrars and their responsibilities, civil-status registers and charts (articles 1-29).
- 2) Title II. Rules that are common to the various civil-status records: establishment of records, replacement of omitted or destroyed records, cancellation and rectification of erroneous records, modification of records, transcriptions, and marginal notes (articles 30-60).
- 3) Title III. Specific rules regarding the various civil-status records: birth records, marriage records and death records (articles 61-94).
- 4) Title IV. Civil status in international law (articles 95-111).
- 5) Title V. The family record booklet and civil-status records (articles 112-130).

In the following pages, we are going to discuss briefly these various topics.

### I. Organisation of civil status

#### I.1. Civil registrars

In Algeria, the civil registrars are the president and vice-presidents of the People's Municipal Assembly and, abroad, the heads of diplomatic missions with consular constituencies, and the heads of consular offices (OCS article 1).

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<sup>2</sup> Ibn-Khaldoun: *Discours sur l'histoire universelle*, translation Monteil, 3 vol., Impr. catholique, Beyrouth, 1967, vol. I, p. 259.

<sup>3</sup> 'Abd-al-'Aziz Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, 2e édition, Dar humah, Alger, 1999 [?].

<sup>4</sup> Text of the law in Arabic, as modified by the law of 2 April 1930 in: Sa'd: *Nidham al-halah al-madaniyyah*, p. 305-310.

<sup>5</sup> Source: Family Code: Nationality Code and Civil-status code, Berti éditions, Algiers, 2007. We would also like to indicate as well internet sources concerning the three following texts quoted in this article: Algerian Civil Code: <http://www.joradp.dz/TRV/FCivil.pdf>; Algerian Penal Code: <http://www.joradp.dz/TRV/FPenal.pdf>; Algerian Family Code: <http://www.joradp.dz/TRV/FFam.pdf>

<sup>6</sup> On the history of civil status in Algeria, see Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, op. cit., p. 18-35.

The president of the People's Municipal Assembly may delegate his civil-registrar functions to one or several municipal agents, aged 21 or over. The delegation order is transmitted to the wali (governor) and to the public prosecutor at the Court under whose jurisdiction the town is placed (article 2 al. 1 OCS). Similarly, the heads of diplomatic missions and the heads of consular offices may be replaced permanently, respectively by vice-consuls or consular agents, on the decision of the Minister of Foreign Affairs (OCS article 2 paragraph 5 and article 104 paragraphs 1 and 2).

### **1.2. The role of civil registrar**

The role of civil registrars is to note births and record them, record marriages, note deaths and record them, and keep civil-status registers as well as ensure they are properly stored. They must also receive minors' marriage authorisations (OCS article 3). The agents who have the function of civil registrar abroad fulfil the same role for Algerian nationals. They also have to transcribe on their registers civil-status records concerning such nationals which have been established by local authorities according to the form utilised in the country (OCS article 105).

The civil registrar in Algeria and the agent occupying this function abroad have to keep two copies each of three different registers: a register of birth records, a register of marriage records, and a register of death records; each register must have a margin to allow marginal annotations (OCS article 6 and 105). As well as these registers, the law requires two alphabetic tables, one annual and one decennial, also established in double, in municipalities as well as consular offices (OCS Article 12). The records must be written in Arabic (OCS article 37).

At the end of each year, a copy of the registers and tables is given to the municipal archives, another to the Court registry, each accompanied by powers of attorney and other annexed documents (OCS articles 9 and 10). As for registers and tables kept at consulates, one copy is given to the Ministry for Foreign Affairs, and the other is kept in the archives of the consular office along with any documents produced by the people concerned, such as copies and translations of transcribed foreign acts and powers of attorney (OCS article 106).

The keeping of the current registers and annexed documents is the responsibility of civil registrars (OCS articles 18-19). Civil-status registers have to be kept at the town hall and the Court registry for a hundred years from their closure. Once that time has passed, the Court registry archives are added to the wilayas' (governorships') archives, where they are kept indefinitely (OCS article 21). There is no mention of the registers that are kept at the town hall, or those that are kept at the consular office or given to the Ministry of Foreign Affairs.

With new municipalities being created, Law 84-9 of 4 February 1982 provides that from 1 January 1985, each new municipality has to establish its own civil-status registers, and the older municipalities are required to deliver documents relating to civil status for people who were recorded there in the period preceding 1 January 1985<sup>7</sup>.

The OCS contains provisions concerning records destroyed in Algeria (articles 39-45) or at the consular offices (articles 107-108). These provisions are completed by Decree 71-155 of 3 June 1971 regarding the procedure for reconstituting records that have been destroyed following disasters or acts of war, and Decree 71-156 of 3 June 1971 relating to commissions and the process for reconstituting civil-status records. The OCS also contains provisions relating to the cancellation and rectification of erroneous records and the modification of forenames and surnames (article 46-57). In order to remain concise, we will not dwell on those.

### **1.3. The civil registrar's responsibility**

The civil registrar is under both judicial and administrative control. Judicial control is the responsibility of prosecutors or magistrates whom they have delegated. They can require the registers to be moved in order to carry out their annual control (OCS article 24). The public prosecutor or his substitutes are required to check the state of the registers, in all cases, when the registers are left with the Court registry. To this end, he will keep minutes during the checks, will denounce any wrongdoing by civil registrars, and request a condemnation against them according to the laws in force (OCS article 25). On the other hand, the depository of the civil-status registers is civilly responsible for alterations made to them, but may, if appropriate, have recourse against the authors of those alterations (OCS article 27). Any alteration or incorrect information within civil-status records, any notes made in relation to records on a separate sheet or anywhere other than on the prescribed registers, result in reparation of the damage suffered by the parties (OCS article 28). The civil responsibility in question here is based on the standards relating to this responsibility in the Algerian Civil Code (hereafter: CCalg), specifically article 124, which provides that: 'Any act whatsoever of a person causing damage to others obliges the person whose fault occasioned the damage to make reparation'.

<sup>7</sup> Sa'd: Nidham al-halah al-madaniyyah fil-Jaza'ir, op. cit., p. 80-81.

The people responsible are also liable to the penalties prescribed by the Penal Code (hereafter: PC; articles 441 paragraphs 1<sup>8</sup>; 158<sup>9</sup>; 159<sup>10</sup>, 214<sup>11</sup> et 215<sup>12</sup>) and to a fine no larger than 200 DA, pronounced at the request of the Public Prosecutor, by the civil court having effect in civil matters. (article 29 OCS).

As well as judicial control, there is administrative control. This means that the Minister of the Interior may, on the strength of a governor's report, decide to sack a civil registrar who has been severely sentenced<sup>13</sup>.

OCS article 26 indicates that civil registrars carry out their duties under their own responsibility and the control of the public prosecutor. OCS article 2 also indicates that the president of the People's Municipal Assembly may, under his responsibility, delegate his duties to one or several municipal agents. This means that the State is not held responsible for the errors committed by these people. However, article 136 of CCalg is applicable here, and provides that:

"Art. 136 - The principal is responsible for the damage caused by his agent, if this act was accomplished by the agent while exercising his functions or in the course of exercising them.

The principal-agent relationship exists even when the principal has not been free to choose his agent, if the agent works for the principal."

CCalg article 137 adds that:

"The principal has recourse against the agent in the case where the agent has committed a serious error."

These two provisions constitute an exception to the norm provided by CCalg article 126, which posits that:

"Civil servants and public agents are not personally responsible for the acts through which they have caused damage to others, if they accomplished these acts in compliance with orders received from a superior, which they had to obey.

These same rules apply to agents acting as civil registrars outside of Algeria<sup>14</sup>."

#### 1.4. The probative value of registers

The CCalg deals with the question of the probative value of authentic records, which are defined as follows in article 324:

"An authentic record is one in which a civil servant, public officer, or person in charge of a public service notes, in conformity with legal procedures and within the limits of his power or competence, facts that have taken place in his presence or declarations made to him by the interested parties."

CCalg article 324 bis 5 posits that:

"An authentic record is authoritative as regards the particulars it contains until it is certified as false; it is enforceable on the entirety of the national territory."

But CCalg article 324 bis 2 adds requirements:

"Authentic records are signed by the parties, any witnesses, and the public officer is mentioned at the end of the record.

If any parties or witnesses are unable to sign or do not know how to, the public officer mentions their declarations at the end of the record, and they add their fingerprints, unless they have a major reason preventing them from doing so.

<sup>8</sup> CP Article 441 paragraph. 1 provides: "Are punished by imprisonment of ten (10) days at least and two (2) months at the most and a fine between one hundred (100) and one thousand (1,000) DA or one of these sentences only:

1) any civil registrar registering a civil-status record on a simple sheet of paper and anywhere other than the prescribed registers; any civil registrar who does not make sure of the consent of fathers, mothers, or other persons whose consent is necessary for a marriage to be valid; any civil registrar who receives, before the time prescribed by civil law, the marriage record of a woman who has already been married. The provisions of the present paragraph are applicable even when the nullity of the civil-status records has not been requested or has been covered.

<sup>9</sup> CP article 158 provides: "Anyone who knowingly deteriorates, destroys, diverts, or removes papers, registers, records or effects conserved in the public archives, Court archives, or depots, or placed in the care of a public depositary, will be punished by imprisonment of five (5) to ten (10) years. Where the deterioration, destruction, diversion or removal has been committed, either by the public depositary, or with the use of violence towards persons, the sentence will be between ten (10) and twenty (20) years."

<sup>10</sup> CP article 159 provides: The public depositary will be punished by imprisonment of between six (6) months and two (2) years when the deterioration, destruction, diversion or removal has been facilitated by his negligence.

<sup>11</sup> CP article 214 provides: any magistrate, civil servant or public officer who, in the exercise of his functions, has falsified any public or authentic document:

1) either by false signatures;  
2) or by alteration of records, handwriting, or signatures;  
3) or by passing off or substitution of persons;  
4) or by making or adding inscriptions on the registers or any other public records after they have been made or closed;  
will be punished by life imprisonment.

<sup>12</sup> CP article 215 provides: Any magistrate, civil servant or public officer who, while drafting records according to his functions, fraudulently alters their substance or circumstances, either by writing conventions other than those described or dictated by the parties, or by declaring as true facts that he knew to be false, or by falsely attesting that facts have been admitted to or took place in his presence, or by deliberately omitting or altering declarations received by him, will be punished by life imprisonment.

<sup>13</sup> Sa'd: Nidham al-halah al-madaniyyah fil-Jaza'ir, op. cit., p. 60.

<sup>14</sup> Ibid., p. 61-62.

Furthermore, when the name, status, address and civil capacity of the parties are unknown to the public officer, they are certified by two (2) adult witnesses, under their responsibility.”

*These standards apply to the civil-status register. The copies that are made on the basis of documents in these registers, bearing the date when they were drafted, the seal and the signature of the person who wrote them, are to be considered to be authentic records in the same way as any other document issued by competent public authorities. But it is possible to impugn them for falsification. The doctrine also mentions that data contained in records entered in the register, which have been taken from the declarations of the interested parties without having been checked by a civil registrar (such as the forename, the date and place of birth, and the names of the parents) may be the object of a contrary proof as they can be subject to error or false pretenses<sup>15</sup>.*

*However, civil registrars are not qualified to receive declarations or draft records outside of their constituencies (article 4 OCS). Again, they may not intervene on the same document in this capacity and under a different title (article 5 OCS). These two rules also apply to agents who act as civil officer outside of Algeria. Violating these two rules results in the invalidity of all records drafted in this manner. The public prosecutor may request that the Presiding Judge make a decision to that effect, or he may take criminal proceedings against the officer in question<sup>16</sup>. It is however necessary to point out that according to CCalg article 326 bis 2:*

“A record that is inauthentic due to incompetence or incapacity of the public officer or by not following the prescribed procedure is valid as a private document if it is signed by the parties.”

*At this point, let us mention OCS article 93, paragraph 3, relating to judicial death declarations. This article posits that judgments declaring a death act as death records and are valid vis-à-vis third parties who can only obtain their rectification in accordance with articles 49 to 54 of the present order.’*

## **II. Birth records**

*Here we will start by talking about ordinary births, and will then deal with more specific types of birth.*

### **II.1. Ordinary birth declarations**

#### **II.1.1. The people responsible for declaring a birth**

*According to OCS article 62, the child’s birth is declared by the father, the mother or, failing that, by any medical doctors, midwives or other persons having witnessed the birth; if the mother gives birth outside of her home, then it may be witnessed by the person in whose home she gave birth. The birth record is drafted immediately (OCS article 62). This implies that the person responsible for the declaration should be present during the birth, see it taking place or facilitate it. To the above list should be added the person entrusted by the family with the birth declaration<sup>17</sup>.*

#### **II.1.2. Time-limit for declaring a birth**

*According to OCS article 61, birth declarations must be made within five days of birth to the local civil registrar, under pain of sanctions detailed in article 442 number 3 of the Penal Code<sup>18</sup>. This time-limit is 60 days in the wilayas of Les Oasis and La Saoura, and for children born abroad, it is ten days. Beyond this time-limit, the civil registrar may not record the birth in his registers, except where an order has been rendered by the president of the Court for the district where the child was born, or the president of the Court in the home district of the petitioner if the place of birth is unknown. This means that a person who has just had a child must, within the prescribed time-limit, contact the mayor of his town in his quality of civil registrar, to inform him of the birth and request that the child be recorded in the civil-status register.*

*OCS article 61 specifies that the day of the birth is not counted and that when the last day of the time-limit is a Friday or a holiday, this time-limit is extended to the first working day following the holiday. In foreign countries, the time-limit is ten days, with the possibility of extending it. Natural events such as earthquakes, civic unrest and war are to be treated in the same way as holidays<sup>19</sup>.*

*If a birth declaration is not made within the legal time-limit, the declarant must contact the prosecutor so that the latter may request the Presiding Judge as indicated in OCS article 61, to make an order allowing the registration of the child within the civil-status register. But while a birth declaration within the time-limit does not necessitate the presentation of any document proving the birth, in the case of a late declaration the declarant must present such a document so that the authorities present may check the child’s parentage*

<sup>15</sup> *Ibid.*, p. 74-75.

<sup>16</sup> *Ibid.*, p. 55-56.

<sup>17</sup> *Ibid.*, p. 91-92

<sup>18</sup> This article provides for a prison sentence of ten days at least to two months at most and a fine of 100 to 1000 DA, or one of those two penalties only.

<sup>19</sup> Sa’d: Nidham al-halah al-madaniyyah fil-Jaza’ir, op. cit., p. 90-91.

as well as the date and place of birth in a precise manner<sup>20</sup> (OCS article 39)<sup>21</sup>. However, the law does not demand in this case that the declarant produce a marriage record or family record booklet to prove that the child has been born in wedlock. There are cases when the marriage has not been recorded, and the marriage can be proven by means other than the marriage record or family record booklet. In addition, it is possible, in spite of the existence of a marriage record or family record booklet, for the child not to be the declarant's<sup>22</sup>.

If the civil registrar has knowledge of a non-declared childbirth, he must inform the public prosecutor, in order that he may immediately take criminal proceedings against the person responsible for declaring the birth<sup>23</sup>.

### II.1.3. Information comprised in the birth record

It is not enough for someone to declare the birth of a child to a civil registrar. It is also necessary for that person to provide the data that must feature in the birth record. These data are indicated in OCS article 63: the day, hour and place of birth, the sex of the child and the forenames it has been given, the forenames, surnames, ages, professions and addresses of the mother and father and, if relevant, the declarant. Immediately after the birth declaration, the civil registrar drafts the birth record (OCS article 62 § 2).

In case of multiple births, the birth declaration gives rise to a distinct birth record for each child (OCS article 66). It is necessary to note in the record in which order the children were born<sup>24</sup>.

The precise date and time of birth are important because of the rights of succession that are attached to them. As far as forenames are concerned, OCS article 64 indicates that they are to be chosen by the father, the mother or, in their absence, the declarant. The forename must sound Algerian, except for children born of non-Muslim parents<sup>25</sup>. Unusual or non-traditional names are forbidden.

Concerning the family name, CCalg article 28, paragraph 1 indicates that a man's name is passed on to his children. FC article 41 specifies: 'The child is affiliated to his father through legal marriage, the possibility of conjugal relations, save in the case of a disclaimer of paternity according to legal procedures'. This effectively means that children cannot take their mother's name. Additionally, they can take their father's name only if they are considered to be illegitimate children. We will come back to the naming of illegitimate children.

Let us specify at this point that before 1976 it was possible to have a record with an entry 'without a family name'. Affected people could contact the court in order to replace this information with a family name of their choice. On 20 February 1972, order 76-7 established new rules, allowing such people to request the attribution of a family name by the public prosecutor, at the tribunal of the municipality where the birth record was registered, and enclosing a copy of this record and birth records of any minor children. After investigation, the public prosecutor then forwards the request to the Court, which makes a decision which is then transferred to the civil-status department in order to make the necessary changes. Now, it is no longer possible for civil-status departments to record that a person is 'without a family name' on any documents<sup>26</sup>.

## II.2. Specific types of birth declaration

### II.2.1. Procedure for children born during a sea voyage

OCS articles 68 and 69 provide numerous details pertaining to declaring the birth of a child born during a sea voyage. The main detail is that the captain of the vessel will be responsible for drawing up a birth record for such a child within five days of the birth, based on a declaration by the father or mother, or, failing that, any other person. This record is then communicated, via the consul, the maritime inspectorate or the Ministry for Justice, depending on the case, to the civil-status registry at the last known place of residence of the child's father, or mother if the father is unknown, so that the child may be recorded in the registers. If the last place of residence cannot be found, or if it is outside of Algeria, the registration is done in Algiers.

### II.2.2. Procedure for stillbirths

<sup>20</sup> *Ibid.*, p. 110.

<sup>21</sup> This article provides that: "when a fact has not been declared to a civil registrar within the prescribed time-limit [...], it is inscribed directly in the register of births, marriages or deaths, without fees, simply by order of the presiding judge of the judicial area where the records have been or should have been registered, on simple request of the public prosecutor attached to the said Court, after a summary request taking account of all documents or justifications likely to establish its materiality".

<sup>22</sup> *Ibid.*, p. 111.

<sup>23</sup> *Ibid.*, p. 90-91.

<sup>24</sup> *Ibid.*, p. 101

<sup>25</sup> A similar disposition is found in article 28 paragraph 2 of the Algerian Civil Code.

<sup>26</sup> Sa'd: Nidham al-halah al-madaniyyah fil-Jaza'ir, op. cit., p. 222-227.

The OCS does not cover stillbirths. It is not necessary to declare the birth of such a child, but it is possible to register it in the death register, on demand by his parents, indicating that it is a child that is 'presently declared lifeless' (OCS article 114).

However, litigation may arise between the child's relatives regarding whether the child was in fact stillborn, or whether he was born alive and died later on, because of the legal consequences regarding succession, legacy, or gift. In this case, a court must decide the outcome of the litigation. If the child was born alive, and died before his birth was declared to the civil registrar, a declaration remains mandatory. The procedure for such a registration is provided by OCS article 39, quoted in note 21<sup>27</sup>.

### II.2.3. Procedure for births in public establishments

Although the OCS mentions the procedure for deaths in public establishments in its article 81, which we will return to, it makes no mention of births in public establishments. However, these types of births can be problematic, as the establishment in question sometimes delays in communicating the data regarding births to the municipality through negligence or ignorance. And when such data do make it to the municipality, the civil registrar refuses to register them in the birth register, considering that the father or mother must produce the family record booklet or marriage record. And if the father or mother cannot produce such a document because the marriage was not registered, the civil registrar refuses to record the birth. But, writes Sa'd, the OCS does not require the production of such a document in order to register births. The civil registrar may not in this regard claim that registration without such a document could lead to false declarations or declarations of the birth of adulterous children who cannot be registered in the father's name (we will return to this question). In spite of this risk, the civil registrar is required to effect a registration on the basis of declarations received. If such declarations are false, the responsibility is not that of the civil registrar, but that of the declarant<sup>28</sup>.

### II.2.4. Procedure for abandoned and found children

Any person having found a newborn child must make a declaration to the civil registrar for the place where the child was discovered. If this person is not prepared to take the child into his care, he must leave the child with the civil registrar. The civil registrar will then write a detailed report mentioning the date, time, place and circumstances of the discovery, as well as a record acting as birth record, mentioning the child's sex and a date of birth based on the child's apparent age, and mentioning as the place of birth the district where the child was found (OCS article 67, paragraphs 1 and 3). The birth record in question is temporary and may be cancelled at the demand of the public prosecutor or interested parties if other information concerning the child comes to light.

CP article 442 paragraph 3 calls for a jail sentence of ten (10) days at least and two (2) months at most as well as a fine between eight thousand (8,000) DA and sixteen thousand (16,000) DA for 'those who, having found a newborn child, do not take it to the civil registrar as the law demands, unless they have consented to take charge of the child and have made a declaration to this effect to the authorities of the municipality where the child was found'.

If the declarant has not indicated any forename for the child, it is the civil registrar's duty to attribute to the child a series of forenames, the last of which will serve as his family name (OCS article 64 paragraph 3 and article 67 paragraph 3).

This rule applies to children placed under the guardianship of social services and devoid of any known birth record or whose birth has been requested to be kept secret (article 67 paragraph 4). Article 245 of Order n° 76-79 of 23 October 1976 on public health allowed a woman giving birth in a hospital to request that the birth be kept a secret. Law 85-05 of 16 December 1985 on the protection and promotion of health, which repeals the health code of 1976, contains no provisions similar to article 245 of the old code, being instead content to indicate in article 73 that 'medical and social assistance modalities, aiming to prevent efficiently any children from being abandoned, are laid down by regulations. But this law has not had any effect on OCS article 67, paragraph 4.

### II.2.5. Procedure for children benefitting from acknowledgment of paternity and kafala

The question of the abandoned and found child brings us to talk about children benefitting from acknowledgment of paternity and kafala, institutions that more or less replace adoption, which is forbidden by Muslim law<sup>29</sup> and by Algerian law (FC article 46)

<sup>27</sup> *Ibid.*, p. 103-104.

<sup>28</sup> *Ibid.*, p. 104-106

<sup>29</sup> The forbidding of adoption is based on the Quran (33:1-5 and 36-40).

CCalg article 28 paragraph 1 indicates that a man's name is passed on to his children. And article 41 of the Family Code (hereafter FC) specifies that 'The child is affiliated to his father through legal marriage, the possibility of conjugal relations, save in the case of a disclaimer of paternity according to legal procedures'. Furthermore, FC article 40 paragraph 1 indicates that 'parentage is established by a valid marriage, the acknowledgment of paternity, proof, apparent or vitiated marriage or any marriage that has been annulled after consummation'. This means that if a child is acknowledged by someone as being his, this child becomes equivalent to a legitimate child, and can take the father's name<sup>30</sup>. Such acknowledgment is covered by FC article 44, in these terms:

"Acknowledgment of parentage, whether fatherhood or motherhood, even when pronounced while deathly ill, establish the parentage of a person of unknown origin as long as it may be permitted by reason or custom."

FC article 45 adds that:

"Acknowledgment of kinship outside of parentage, fatherhood or motherhood, does not bind a third party other than the author of the acknowledgment unless he confirms it.

Any person acknowledging a child as his own must however avoid saying that the child in question is the fruit of an adulterous relationship. Otherwise, the child will not be considered legitimate.<sup>31</sup>"

According to the above-mentioned FC article 40 paragraph 1, 'parentage is established by [...] apparent marriage'. This means that if a man has relations with a woman who is forbidden to him, for instance his sister or the neighbour's wife, but without knowing that it is his sister, or thinking the woman in question was his own wife, the child resulting from this marriage is considered to be his legitimate son, and the child can then be recorded on the civil-status register in his name, and take his family name<sup>32</sup>.

Kafala is another means to remedy the fact that adoption is forbidden in Muslim and Algerian law. The child who has been taken in must keep his original parentage if his parents are known, which means he keeps his parents' family name. If his parents are unknown, the provisions of the above-mentioned article 64 of the Civil Status Code (FC article 120) apply to him. However, executive decree n° 92-24 of 13 January 1992 allows a change of name in case of kafala in order to make the child's family name coincide with that of his guardian, when the child taken in is of unknown father. In this regard, it is necessary to secure the agreement of the mother of a minor child, if she is known and still alive.

This change of name is in accordance with the spirit of the OCS, which allows, in case of legitimate interest, that a person may request to change his forename or surname by order of the presiding judge pronounced on request of the State prosecutor, either on request from the interested party, or his legal representative; the same goes for adding forenames (OCS articles 56 and 57).

Some information indicates that in Algeria 27,421 children born outside of marriage have been registered since 1999. 14,222 are taken in under kafala in Algeria and 1,632 abroad, while 2,946 abandoned children have been reclaimed by their biological mothers. This problem is aggravated by the fact that children born out of wedlock are not attributed to their biological fathers according to Algerian law. In order to remedy this problem, the Ministry for National Solidarity has announced that a bill will allow the acknowledgment of fatherhood for children born outside of marriage, using the modern methods available in this area, particularly DNA analysis. According to this bill, the child will take his biological father's name<sup>33</sup>.

Let us point out here that the above-mentioned FC article 40, paragraph 1, allows the establishment of parentage by proof, and paragraph 2 specifies that 'the judge may have recourse to scientific methods for proving parentage'. However, the proof in question in this case concerns only valid or vitiated marriage. It is not a case of proving parentage resulting from illicit relations. Even if it is proven that a man is the biological father of a child, this will not allow the child, according to the Family Code in force, to be recorded in the civil-status register as that man's child, or to take his family name<sup>34</sup>.

One of the problems posed in the West is the case where a Muslim Algerian woman marries a Christian. This marriage is prohibited (FC article 30). Any children resulting from this marriage cannot be registered by the civil-status office in the father's name, or take on his family name. They will be registered under their mother's name, and take whatever name is attributed to them by the civil registrar; they may not take their mother's family name<sup>35</sup>.

### III. Marriage records

#### III.1. The officer responsible for drafting the marriage record

Marriage in Algeria can be celebrated in the presence of a civil registrar, who will draft the marriage record right away in his registers and will give the couple of family record booklet noting the marriage. The

<sup>30</sup> 'Abd-al-'Aziz Sa'd: *Al-zawaj wal-talaq fi qanun al-usrah al-jaza'iri*, Dar al-ba'th, Costantine, 1986, p. 218,

<sup>31</sup> *Ibid.*, p. 214-217.

<sup>32</sup> Regarding apparent marriage, see Sa'd: *Al-zawaj wal-talaq fi qanun al-usrah al-jaza'iri*, *op. cit.*, p. 214.

<sup>33</sup> <http://www.algerie-femme.com/actu/dossiers/dossier-120-abandon-nouveaux-nes-algerie.html>.

<sup>34</sup> Sa'd: *Al-zawaj wal-talaq fi qanun al-usrah al-jaza'iri*, *op. cit.*, p. 218.

<sup>35</sup> Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, *op. cit.*, p. 119-120.

marriage can also take place in front of a *cadi*<sup>36</sup>, who will draft the record, give the couple a marriage certificate, and send an extract of the record within three days to the civil registrar, who will then transcribe the extract within five days from receiving it and will give the couple a marriage record booklet (OCS article 72).

The doctrine indicates that those two officers are the object of a dispute in Algeria. Marriage before a civil registrar is considered to be an administrative formality without any religious meaning. As for marriage before a judge, courts are not always available to celebrate it, and can sometimes only offer a very distant appointment. For these reasons, it is common for future spouses simply to marry according to Muslim tradition, in the presence of a Muslim religious official, who reads the *Fatiha* (first chapter of the Quran), and two witnesses, the ceremony being followed by a party.

These couples then come back to register the marriage once the woman is already pregnant<sup>37</sup>. These *Fatiha* marriages are not considered valid by Algerian authorities, and often end up in court for the legalisation of the marriage or the acknowledgment of fatherhood, when the progenitor denies his involvement. Thus, it is women and children who pay the price of these unlegalised marriages. Statistics from Algiers Court reveal that the number of cases to do with the legalisation of *Fatiha* marriages has reached 5,600. These numbers remain, according to a number of lawyers, less than in reality<sup>38</sup>. FC article 22 provides on this subject that:

“Marriage is proven by the deliverance of an extract from the civil-status register. If it is not registered, it is rendered valid by judgment.

A judgment validating a marriage must be transcribed into civil-status registers on the initiative of the public prosecutor.”

In order to solve these problems, Sa'd proposes to create a special section of the court, responsible for celebrating weddings, and to make sure celebrations conditional on authorisation from the municipality, granted on presentation of a marriage record or family record booklet, under pains of severe sanctions<sup>39</sup>. In another of his works, he proposes to give imams in the mosques the responsibility for drawing up marriage records and recording them in official registers, and then communicating these records to municipalities, for them to transcribe them into the civil-status registers within a predetermined time-limit. He justifies his proposal by the fact that the Algerian legislature has neither the power nor the intention to forbid *Fatiha* marriages, and wishes to respect the religious sentiments of its citizens and their attachment to Islamic customs<sup>40</sup>.

As far as *Fatiha* weddings are concerned, the author considers that as long as this type of marriage continues to be celebrated according to custom, and that there is no law forbidding or punishing it, it ought to be registered as a civil-status procedure, since the registration of these marriages concern's people's status. It would then be appropriate for the public prosecutor to intervene in order to register these marriages as long as they follow Islamic norms and the standards set out in FC article 9, according to which 'the marriage contract is concluded by the exchange of consent between the two spouses'. This will protect the interests of the spouses and their children, and will put an end to the accumulation of court cases relating to the recognition of *Fatiha*<sup>41</sup>.

Let us point out here that the law does not lay down a time-limit for registering a marriage celebrated without going before the *cadi* or the civil registrar. However, this is important because of the aforementioned FC article 22 linking the validity and proof of marriage to the civil-status register, or, failing this, to a judgment, which has to be then registered in the civil-status register. Without such a registration, in case of denial, any action relating to the marriage and related rights is not admissible. Article 5 of law 63-224 of 29 June 1963 provides on this subject that:

“No one can claim, as a spouse, the effects of marriage, without producing a marriage record which has been drafted or transcribed in the civil-status registers. Marriages contracted before the present law must be transcribed within three years.”

The registration of an omitted marriage is carried out according to the procedure provided by OCS article 39, mentioned in Note 21. The registration of the marriage has a retroactive effect from the date of its religious celebration. The civil registrar must then provide the couple with a marriage record and a family record booklet. If one of the two spouses or their heirs disputes the marriage, the person requesting its registration in the civil-status register must first obtain a court decision confirming the existence of the marriage in question<sup>42</sup>.

<sup>36</sup> CF article 18 does not mention a *cadi*, but a notary: 'the act of marriage is concluded before a notary or legally entitled public officer'. So there is a contradiction between this article and OCS article 72. In Algeria, there are no matrimonial notaries (*ma'zoun*) in charge of carrying out the wedding, as is the case, for instance, in Egypt.

<sup>37</sup> Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, op. cit., p. 129-130.

<sup>38</sup> <http://www.lemague.net/dyn/spip.php?article5118>

<sup>39</sup> Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, op. cit., p. 130.

<sup>40</sup> Sa'd: *Al-zawaj wal-talaq fi qanun al-usrah al-jaza'iri*, op. cit., p. 63-65.

<sup>41</sup> *Ibid.*, p. 63-64.

<sup>42</sup> Belhaj Al-'Arabi: *Al-wajiz fi sharh qanun al-usrah al-jaza'iri, diwan al-matbu'at al-jami'iyyah*, Alger, vol. I. 199, p. 140-145; Sa'd: *Al-zawaj wal-talaq fi qanun al-usrah al-jaza'iri*, op. cit., p. 162-167. For more details on the registration procedure, see Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, op. cit., p. 150-165.

### III.2. Information contained in the marriage record

The marriage record drafted by the *cadi* or civil registrar must indicate that the marriage took place in compliance with the conditions provided by the law. It must also mention:

- The surnames and forenames of the spouses as well as their dates and places of birth,
- The surnames and forenames of their fathers and mothers,
- The surnames, forenames and ages of the witnesses,
- If required, the legal marriage authorisation,
- The age dispensation granted by the competent authority (OCS article 73).

The authorisation mentioned in point 4 refers in particular to FC article 8 relating to marriage with another woman. This is in fact a double authorisation: from the previous wife and the court. This article provides that:

“It is permissible to contract a marriage with more than one wife within the limits of *chari’â* if the motive is justified, and the conditions and intention of equity are present.

The spouse must inform his previous wife and the future wife and request a marriage authorisation from the presiding judge of the court for the place where he resides.

The presiding judge may authorise the new marriage, if he finds that they consent and that the spouse has proven a justified motive as well as his ability to provide equity and the necessary conditions for married life.”

The FC provides, in its articles 8 bis 1 and 8 bis 2, a sanction for not obtaining these two authorisations. These articles provide that:

“Art. 8 bis - In case of deceit, each wife can initiate divorce proceedings against the spouse.

Art. 8 bis 1 - The new marriage is cancelled, before its consummation, if the spouse has not obtained the court’s authorisation in accordance with the conditions provided in the above article 8.”

The age dispensation mentioned in point 5 refers to FC article 7 paragraph 1, which provides that:

“Marriage capacity is considered to be valid at 19 years of age for men and women. However, the court can grant an age dispensation for reasons of interest or in case of necessity, once the aptitude for marriage of both parties has been established.”

OCS article 77 provides that the *cadi* or civil registrar who has drafted a marriage record without the authorisation of the persons who are competent to assist one of the spouses, is punished according to the penalties provided in article 441 paragraph 1 of the Penal Code<sup>43</sup>. This article refers to FC article 11, which provides that:

“A woman having reached the age of majority will conclude her marriage contract in the presence of her “*wali* [matrimonial tutor]”, who is her father or a close relative or any other person of her choice.

Without prejudice of the provisions of article 7 of the present law, the marriage of a minor is contracted through her “*wali*”, who is her father, or a close relative. The court will act as guardian for anyone who is without one.”

The FC seems to indicate that the presence of the *wali* is a simple formality. Thus, FC article 13 provides that:

“The *wali*, whether he is the father or anyone else, is forbidden to compell a minor placed under his guardianship to marry, and may not force her to marry without her consent.”

However, FC article 33 paragraph 3 indicates that:

“If contracted in the absence of two witnesses or dowry, or of the *wali* when his presence is obligatory, the marriage will be annulled before consummation and will not entitle any of the parties to the dowry. After consummation, it is confirmed, on the condition that the parity dowry has been paid.”

The consent to marriage mentioned here may be given verbally at the moment of establishing the marriage record, or by authentic record drafted by the civil registrar, the *cadi* at the place of residence, or a notary. If the person is located abroad, this record is drafted by diplomatic or consular agents or by a local authority with the power to draft authentic records (OCS article 76). The law does not specify what it means by ‘notary’.

Concerning the witnesses mentioned in point 3, they are required by FC article 9, under pains of annulment before consummation (FC article 33 paragraph 2). OCS article 33 specifies that witnesses to civil-status records must be aged at least twenty-one, may or may not be relatives, without sex distinction; they are chosen by the interested parties. The doctrine adds that both witnesses must be Muslim if both spouses are<sup>44</sup>, and if they are not able to sign the reason for this must be mentioned (OCS article 36).

<sup>43</sup> This article provides for imprisonment of ten days at least to two years at the most and a fine of 100 to 1000 DA or one of these two sentences only.

<sup>44</sup> Sa’d : *Al-zawaj wal-talaq fi qanun al-usrah al-jaza’iri*, op.cit., p.130-131

The OCS omits one important marriage condition, which is the dowry, even though it is demanded by FC article 9 bis. It is defined as follows by FC article 14: "The dowry is what is paid to the future wife in currency or any other legal goods. This dowry is her property and she may do with it as she chooses". This omission could be explained by the fact that the dowry is mentioned in the marriage contract, failing which the wife has a right to a parity dowry (FC article 15). FC article 33 specifies that, if not consummated, marriage contracted without a dowry is annulled. If consummated, the marriage is confirmed once the parity dowry has been paid.

### **III.3. Documents required for drafting the marriage record**

As well as the documents to be mentioned in the marriage record, mentioned in OCS article 73 (which is to say, the legal marriage authorisation and the age dispensation granted by a competent authority; see above under point III.2), both of the future spouses must justify their civil status by producing a birth record extract or a family record booklet relating to a previous marriage. Anyone who is unable to produce either of these two documents may instead produce an officially recorded document (*acte de notoriété*) established by the presiding judge, based on a declaration made under oath by the petitioner and three witnesses, or on producing documents mentioning the petitioner's civil status, such as his military register, identity card, parents' family record booklet, and so on (OCS article 74).

A divorced or widowed woman must provide a court decision along with an attestation saying that the divorce is definitive. As for a widow, she must provide her husband's death record, unless these elements already figure in the family record booklet (OCS article 75).

If the couple are diplomats, or work for the military or the police, they must produce an authorisation granted by their superiors<sup>45</sup>.

If the marriage involves a foreigner residing permanently or temporarily in Algeria, he must, in order to be able to marry an Algerian or foreign spouse, provide documents certifying his capacity to marry in accordance with the laws of his country<sup>46</sup>. He must also provide an administrative authorisation. For foreigners, it is granted by the wali (equivalent of the prefect) according to the Ministerial Order of 11 February 1980. When only one spouse is resident in Algeria, this authorisation requires the opinion of the department for National Security. As for the marriage of an Algerian to a foreign spouse, the authorisation requires the favourable opinion of this department. If the woman is a Muslim, and the future husband is not Muslim, the authorisation will be refused, such a marriage being prohibited (FC article 30).

As well as these documents, FC article 7 bis requires a medical document. The article provides that:

"The future spouses must produce a medical document less than three (3) months old, certifying that they have no illnesses or have no other risk factors which would counter-indicate marriage.

Before drafting the marriage contract, the notary or civil registrar must establish that both parties have undergone medical examinations and have knowledge of any illnesses or risk factors these could reveal, counter-indicating marriage. This will be mentioned in the marriage record.

The terms and conditions of application of this article are defined by regulation<sup>47</sup>."

### **III.4. Place of marriage**

According to OCS article 71,

"The civil registrar or *cadi* who is competent to draft the future spouses' marriage record is either the one from their place of residence or from one of their places of residence, or else from the place where one of the future spouses has been living continuously for at least a month before the date of the marriage. This timescale does not apply to Algerian nationals."

This clause means that foreigners may marry in Algeria only if one of them has been living there continuously for at least a month from the date of the marriage.

The law is silent concerning the transfer of the civil registrar or *cadi* outside of his seat, for instance in order to go to a hospital, prison, or home of one of the spouses or their relatives. The marriage is to be considered valid as long as the registrar or *cadi* in question acts within his jurisdiction and respects the procedures required by law<sup>48</sup>.

We will return in point V to marriages celebrated abroad.

### **III.5. The wife's name**

The OCS does not mention the married woman's family name, and no law covers this question. This comes from the fact that women in Arabic countries keep their own names after marriage. It is considered to be a

<sup>45</sup> Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, op. cit., p. 148-149.

<sup>46</sup> CCalg article 10 paragraph. 1 provides: "Civil status and people's capacity are governed by the law of the State of their nationality'.

<sup>47</sup> The terms and conditions of application of this article are defined by executive decree n° 06-154 of 11 May 2006.

<sup>48</sup> Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, op. cit., p. 133-134.

mark of the independence of Muslim women, as opposed to Western women who are considered incapable, subjected in all economic matters to their husband's previous authorisation<sup>49</sup>.

#### **IV. Death records**

As we did for birth records, we are going to start by handling ordinary deaths, and then certain unusual cases.

##### **IV.1. Ordinary death declarations**

###### **IV.1.1. The people responsible for declaring deaths**

OCS article 79 sets out that 'death records are drafted by the civil registrar of the district where the death took place, based on the declaration of one of the deceased's relatives, or that of a person having the most complete and exact information possible concerning the deceased's civil status.' A person having notice of a death in his home, his hotel, his workshop or related workplace must inform the civil registrar thereof.

###### **IV.1.2. Time-limits for declaring a death**

OCS article 79 provides three time-limits. In a normal situation, the limit is twenty-four hours from the death. This time-limit is increased to 60 days for the wilayas of La Saoura and Les Oasis. In the case of violent or suspicious deaths, this time-limit is indeterminate and depends on how much time is necessary to examine the body. Not observing these time-limits is punishable according to the sanctions provided in article 441 paragraph 2 of the penal code<sup>50</sup>.

If the death declaration is not made within the legal time-limit, the procedure is the same as for births that have not been declared in time (see II.1.2). Any person having a legal interest may address himself to the public prosecutor in order that he may intervene with the presiding judge in order to emit an order authorising the registration of the death in the civil-status register<sup>51</sup>.

##### **IV.2. Specific types of death declaration**

###### **IV.2.1. Death outside of the deceased's district of residence**

If the death occurs anywhere other than the deceased's district of residence, the civil registrar must address the death record to his counterpart at the deceased's last place of residence in order that he may transcribe it into the local register (OCS article 81, paragraph 1).

###### **IV.2.2. Death in hospital or penitentiary establishments**

If a death occurs in a hospital or medical establishment, such as maritime or civil hospitals or other public establishments (orphanages, old people's residential homes), it is up to the director of the establishment to declare it, within 24 hours, to the civil registrar (OCS article 81, paragraph 2). If the death has occurred in a penitentiary establishment, the director must 'immediately' advise the civil registrar (OCS article 85). In both cases, the civil registrar must go to the place of death in order to draft the death record according to the declarations made to him and the information he has gathered (OCS article 81 paragraph 3 and OCS article 85). If the death is due to a death sentence, it is for the court clerks to inform, within 24 hours; the civil registrar of the place where the deceased has been executed (OCS article 84).

###### **IV.2.3. Suspicious or violent death**

When there are signs or indications of a violent death, or other circumstances leading to suspicion of such, a police officer, assisted by a medical doctor, must draw up a report (OCS article 82). It is in this case up to the police officer to inform the civil registrar of the place where the death took place, giving the information contained in his report, according to which the death record is drafted (OCS article 82, paragraph 2). If the death took place outside of the deceased's place of residence, the civil registrar must address the death record to his counterpart at the deceased's last place of residence, in order that he might transcribe it into the local register (OCS article 81, paragraph 1).

###### **IV.2.4. The case of a person found dead for an unknown reason**

When the body of a deceased person has been found and can be identified, a death record must be drafted by the civil registrar of the presumed place of death, however much time has elapsed between the death and the discovery of the body. If the deceased cannot be identified, the death record must include as complete a description as possible, so that the record may be rectified if the body is later identified (OCS article 88).

<sup>49</sup> *Ibid.*, p. 99.

<sup>50</sup> This article provides for imprisonment of ten days at least to two months at the most and a fine of 100 to 1000 DA or one of these two sentences only for those who 'without previous authorisation from a public officer in the case when it is required, have a deceased individual interred; those who contravene in any way the legislative and regulatory provisions concerning the aforementioned interments'.

<sup>51</sup> Sa'd: Nidham al-halah al-madaniyyah fil-Jaza'ir, op. cit., p. 185.

#### **IV.2.5. Death during a boat or plane journey**

*If the death takes place during a boat or plane journey, the death record is drafted in the same way as for birth records during a maritime voyage (see above II.1.3). The transcription of the death record is made into the civil-status register of the deceased's last place of residence or, if this is unknown, in Algiers (OCS article 87).*

#### **IV.2.6. Death declared by a civil judgment**

*OCS articles 89 to 94 deal with the question of people who have disappeared in situations of war or natural catastrophe, whose bodies have not been found. These people are then declared to be legally deceased. If a person declared to be deceased was to reappear after such a judgment, the public prosecutor or any other interested party may request the cancellation of the judgment (OCS article 94). The OCS makes a distinction between several different situations according to the nationality and residence of the deceased.*

*In the case of an Algerian who has disappeared in Algeria or outside of Algeria, it is possible for any interested party or the public prosecutor to file a request for a legal death declaration, which should be addressed to the court of the deceased's place of birth, or of the deceased's habitual place of residence in Algeria if he was born outside of Algeria; or at the Algiers Court if he was born outside Algeria but has no known place of residence in Algeria.*

*If the missing person is a foreigner or a stateless person, the request for a legal death declaration may be addressed to the Algerian court only if the person disappeared either in Algeria, or aboard an Algerian ship or aircraft, or abroad but he was habitually residing in Algeria. The request is made to the court at his habitual place of residence in Algeria or, failing this, at the court in Algiers.*

*If several people have disappeared during the same event, a collective request may be presented to the court at the place where the disappearance took place or, failing this, at the Court in Algiers (OCS art. 91).*

*The operative provisions of the declarative death judgment are transcribed into the civil-status registers at the place of birth or, failing this, at the deceased's last place of residence. In case of a collective judgment, the individual extracts from the operative provisions are transmitted to the civil registrars of the place of birth or last place of residence of each of the missing persons, for transcription (article 93, §§ 1 and 2).*

#### **IV.3. The information featuring in the death record**

*OCS article 80 indicates which information must feature in the death record, which is:*

- *the date, time and place of death;*
- *the forenames, surname, date and place of birth, profession and place of residence of the deceased person;*
- *the forenames, surnames, professions and places of residence of the deceased's father and mother;*
- *the forenames and surname of the deceased's spouse, if the deceased was married, widowed or divorced;*
- *the forenames, surname, age, profession and place of residence of the declarant and, if relevant, his relationship to the deceased.*

*If a person dies without being identified, it is shown in the death record that the deceased is unknown, along with his approximate age, the place of death, and the most complete description possible, so that the record may be corrected in case the deceased is later identified. If the deceased can be identified, but the date of death is unknown, an approximate date must be entered into the record (OCS article 88).*

*When the death is due to violence or an execution, or takes place in a penitentiary establishment, no mention is made of these circumstances in the registers (OCS article 86). However, in case the death is declared by a judgment, the operative provisions of the judgment are transcribed onto the registers (OCS article 91, paragraph 1). In this case, the date of death must be set taking into account the presumptions resulting from the circumstances of the case, or failing this, the day of the disappearance; this date must never be indeterminate (OCS article 92 paragraph 2).*

#### **IV.4. Burial authorisation**

*The burial may not take place without an authorisation from the civil registrar, who may deliver it only upon production of a certificate established by a doctor or, failing this, a judicial police officer whom he has requested to verify the death (OCS article 78). Article 82 specifies that, in case of violent or suspect death, the burial may not take place until a police officer, assisted by a doctor, has drawn up a report on the state of the body and the circumstances surrounding the death (OCS article 82).*

#### **V. Civil status in international law**

*OCS articles 95 and 111 are devoted to civil status in international law. Articles 104 to 111 deal with the agents responsible for civil status and updating the registers abroad, questions which we mentioned previously. In the following pages, we will briefly discuss the other questions.*

## V.1. Local civil status

OCS article 95 states that:

*“Any civil-status record of Algerians or foreigners, established in a foreign country, is authoritative if it has been established in accordance with the formalities followed in the said country.”*

Thus, if Algerians get married abroad, or register their children’s births or their relatives’ deaths abroad, the records produced by the relevant country’s authorities will be considered valid. However, OCS article 97, paragraph 1, specifies that: ‘a marriage concluded abroad between Algerians, or between an Algerian and a foreigner, is valid, if it was celebrated according to the formalities followed in the relevant country, provided that the Algerian complied with the substantive conditions required by the law of his country for contracting marriage’. It is noticeable here that the OCS mentions only the marriage of an Algerian (in the masculine) to a foreigner (in the feminine), and does not mention the marriage of an Algerian woman to a foreigner. This omission aims to attract attention to the fact that the marriage of a Muslim Algerian woman to a non-Muslim is prohibited (FC article 30)<sup>52</sup>.

Civil-status records established abroad concerning Algerians are transcribed, either automatically or on the request of the interested parties, onto the civil-status registers of the current year, kept by diplomatic agents with a consular constituency or the consuls with territorial jurisdiction (OCS article 103). No time-limit is imposed for such a transcription. If, later on, an Algerian needs a copy of such a record, it is possible to request one from the consulate which registered it if he is still abroad or the Algerian Ministry of Foreign Affairs if he has returned to Algeria<sup>53</sup>.

## V.2. Consular civil status

OCS article 96, paragraph 1 states that:

*“Any Algerian’s civil-status record from a foreign country is valid if it has been received, in accordance with Algerian law, by diplomatic agents or consuls.”*

A marriage implicating two Algerians, or an Algerian man and a foreign woman, is valid if it has been celebrated by diplomatic agents with consular jurisdiction or Algerian consuls, in accordance with Algerian law (OCS article 97, paragraph 2). It is noticeable here also that the OCS mentions only the marriage of an Algerian (in the masculine) to a foreigner (in the feminine), and does not mention the marriage of an Algerian woman to a foreigner. This omission also aims to attract attention to the fact that the marriage of a Muslim Algerian woman to a non-Muslim is prohibited (FC article 30)<sup>54</sup>.

Article 97, paragraph 3, indicates that ‘when the foreign spouse does not have the nationality of the host country, this marriage may be celebrated only in the countries determined by decree. This decree seems to have been forgotten by the Algerian legislature<sup>55</sup>.

## VI. Copies of records, family record booklets, and civil-status extracts

Civil-status registers may be consulted only by the people concerned by them, and registers more than two hundred years old are subjected to the rules governing the consultation of municipal archives (OCE article 22). The authorities are entitled to consult them, but without moving them (OCS article 23). These registers may be moved only for consultation by courts in view of a decision, and by public prosecutors for their annual audits (OCS article 23).

In order to facilitate the access of interested parties to data concerning them, the law provides a possibility of obtaining an official copy of the registers (OCS articles 11 and 65). In addition, it has provided for family record booklets and civil-status summaries.

### VI.1. Copies of records

Any person may request from the depositaries of civil-status registers copies of the records registered therein. These copies, ‘showing in words the date of their deliverance and carrying the seal and signature of the delivering authority, are authoritative until legally declared false’. It is also possible to obtain an extract of the data contained in the civil-status register, which has the same probative value (OEC article 11). However, OEC article 65 provides that ‘no one, with the exception of the public prosecutor, the child, his direct ascendants or descendants, his spouse, guardian, or legal representative if he is minor or in a state of incapacity, may obtain an official copy of a birth record other than his own, unless it is by virtue of an authorisation delivered by the presiding judge of the place where the record was received, and on written demand from the interested party’ (article 65, paragraph 1).

<sup>52</sup> *Ibid.*, p. 270.

<sup>53</sup> *Ibid.*, p. 262.

<sup>54</sup> *Ibid.*, p. 262.

<sup>55</sup> *Ibid.*, p. 269.

## VI.2. Family record booklets

Family record booklets are handed by the civil registrar, or the diplomatic or consular agent when the marriage is celebrated abroad, to the spouses, on the occasion of the celebration or transcription of their marriage (OCS articles 112 and 121). It contains:

- an extract of the spouses' marriage record,
- extracts of the children's birth records,
- extracts of the spouses' death records,
- extracts of the children's death records (OCS article 113).

The family record booklet also contains references to judicial decisions having an effect on a record whose extract is included in the family record booklet (OCS article 115).

In case of divorce, a second record booklet may be issued, by request, to whichever spouse no longer has the first record booklet, including all extracts and references contained in the first (OCS article 119). The same is true for widowed wives<sup>56</sup>.

The family record booklet is placed in the keeping of the head of the family, who must make sure it is kept up to date (OCS article 116) by producing it to the civil registrar who has requested it in view of an update. If he does not do this, it will be under pain of sanctions detailed in PC article 228<sup>57</sup> relating to the use of civil-status extracts from an incomplete or inaccurate family record booklet (OCS article 117).

OCS article 118, paragraph 2, indicates that 'each extract, each reference contained in the family record booklet has the probative value of a civil-status record extract and any references added to the said records as marginal notes'. However, this implies that the family record booklet has been kept up to date. Sa'd considers that the family record booklet in this regard, should serve to make copies of the extracts contained within instead of requesting official copies from the civil registrar as provided by OCS article 65<sup>58</sup>.

## VI.3. Civil-status summaries

In proceedings and enquiries relating to administrative requests conducted by administrations, public services or establishments, companies, organisations, State funds, employees, or any other person related to these institutions, the petitioner must produce the family record booklet or a birth record extract, on the basis of which the agent establishes a summary signed by himself and the petitioner, which is added to the file. The petitioner may also present these two documents to the town hall of his municipality of residence, where the agent will proceed to register the data into summaries signed by the administrative officer as well as the petitioner, who may then produce them to the organisation responsible for the proceedings (OCS articles 122 and 123). However, these summaries have a limited use. Thus, they cannot be used for naturalisation, for the delivery of a passport or nationality certificate, for registration in the commerce register, for the recruitment of administrative officers, or for the liquidation of pension rights of these administrative officers and agents (OCS articles 124-125).

<sup>56</sup> *Ibid.*, p. 250.

<sup>57</sup> This article provides that anyone who:

- 1) knowingly establishes an attestation or certificate relating facts that are materially incorrect;
- 2) falsifies or modifies in any way an attestation or certificate that was originally sincere;
- 3) knowingly uses an incorrect or falsified certificate or attestation;

will be sentenced to a prison sentence of six (6) months to two (2) years and a fine between six hundred (600) and six thousand (6000) DA or one of those two sentences only, unless the fact corresponds to an even more serious offense.

<sup>58</sup> Sa'd: *Nidham al-halah al-madaniyyah fil-Jaza'ir*, op. cit., p. 251.