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The Role of Nationality in Solving Problems of Conflict of Laws in Matters of Personal Status (Marriage and its Dissolution as a Model)

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Abstract:

If a person's individual status belongs to them alone, family status encompasses their ties with others, as reflected in purely family relations. The marital bond is considered one of the broadest legal relationships open to conflict of laws, given that legal systems differ greatly in their views on it. Among the conclusions drawn is that the Algerian legislator, as a general rule, has subjected matters of the conclusion of the marital bond and its dissolution to the law of nationality. Accordingly, questions arise regarding the role assigned to this connecting factor and the exceptions applicable to it.

Keywords: Nationality, Marriage, Family Relationships, Marital Bond, Choice-of-Law Criterion (Attribution Rule).

Introduction :

Legal problems are too numerous to count. Because of this, a lawmaker cannot create a specific choice-of-law rule for every single situation. Instead, lawmakers group similar legal issues into categories called connecting categories. Each category is then linked to a specific country's law using a connecting factor. Looking at the Algerian Civil Code, these connecting categories fall into five main groups:

- Group1: Deals with individual matters, known as personal status, which are governed by personal law.
- Group 2: Deals with property and assets, which are governed by the lex situs (the law of the place where the property is located).
- Group 3: Deals with contractual obligations, which are governed by the law of autonomy (the law chosen by the parties).
- Group 4: Deals with non-contractual obligations (torts/wrongs), which are governed by the law of the place where the act happened.
- Group 5: Deals with the formal validity of legal acts, which is governed by the law of the place where the contract or act was made.

Personal status means legal matters about individuals that are ruled by personal law. Countries disagree on how to define this law. Some systems, like Algerian law, base personal status on the law of nationality (lex patriae). Others, like English and American law, base it on the law of domicile (lex domicilii).

While an individual's status affects just one person, family status involves their relationships with others. This includes purely family ties like marriage, divorce, paternity, parent-child relationships, custody, and guardianship as well as financial family matters, especially inheritance (family succession).

The marriage bond is one of the biggest areas for conflict of laws because legal systems view it very differently. Some laws see it as a purely religious bond, while others view it as a strictly civil contract. Some countries have even treated it as a temporary bond that can end by mutual consent, like the former Soviet Union. As a general rule, the Algerian lawmaker subjects the formation, effects, and dissolution of marriage to the law of nationality. However, there is a major exception: Algerian law applies to all these matters if one spouse was Algerian at the time of the marriage.

This leads to our main legal problem: What role does nationality play in the formation, effects, and dissolution of marriage? And what is the exact legal nature of the exception that forces the use of Algerian law in these cases?

Chapter 1: The Role of Nationality in the Formation and Effects of Marriage

Like any legal relationship, a marriage needs certain conditions to be valid and to produce its legal effects. This raises two questions: What role does nationality play in the formation of a marriage? And what role does it play in the legal effects that follow?

Section 1: The Role of Nationality in the Formation of Marriage

To complete a marriage, two types of conditions must be met: substantive requirements (essential conditions like consent and capacity) and formal requirements (procedures and ceremonies). Nationality plays a major role in substantive requirements, but only a secondary role in formal requirements.

First Subsection: The Role of Nationality Regarding the Formal Validity of Marriage

Substantive conditions of marriage are the fundamental requirements for the establishment of the marital bond, the absence of any of which results in nullity. It is extremely difficult to enumerate them because characterization varies across different states, although most consider the main conditions to be: legal capacity to marry, consent of both spouses, parental consent for minors, and impediments to marriage such as consanguinity and lineage. [1] In Algerian law, Articles 9 and 9 bis of the Family Code specify these conditions as: mutual consent, legal capacity, the legal guardian (wali), witnesses, and the absence of legal impediments.

Most comparative legal systems [2] agree on subjecting these conditions to the national law of both spouses, including Algerian legislation, which stipulates in Article 11 of the amended and supplemented Civil Code that the substantive conditions concerning the validity of marriage are governed by the national law of each spouse. This solution aligns with international agreements, such as the Hague Convention of June 12, 1902, relating to the conflict of laws regarding marriage.

Naturally, the relevant time for applying the law governing both spouses is the time the marriage is concluded. Applying this law is considered most compatible with the choice-of-law concept because the marriage contract creates a legal regime between two individuals belonging to different communities. Each state's law has established rules to protect its own families; thus, this regime cannot validly arise if we apply the law of one party and ignore the other. At the very least, it respects the principle of equality between man and woman, which has become a demand in contemporary laws. [3]

Applying the national law of both spouses raises no difficulty when they share the same nationality. However, disagreement arises when their nationalities differ. One jurisprudential trend favors cumulative application (application cumulative) for both laws together. This means that a marriage is not substantively valid unless all conditions under each spouse's national law are met, along with the provisions of the other spouse's national law. Their argument is that the conditions set by both laws specifically organize the marital bond itself, so that neither spouse has privilege over the other. However, this opinion is practical to implement and leads to restricting mixed marriages, if not making them impossible. Therefore, the dominant jurisprudential and judicial opinion settled on distributive application (application distributive) [4], meaning it suffices for each spouse to meet the substantive conditions required by their own law, without considering what the other spouse's law dictates. Nevertheless, the application must be cumulative regarding marriage impediments that touch upon the core of marriage itself, such that they cannot exist for one spouse without affecting the other, and which aim to protect social interests or respond to human and ethical principles. Thus, these include impediments derived from consanguinity, health impediments such as contagious physical diseases and mental illnesses, as well as the subsistence of an existing marriage, and difference of religion in states that consider religious status (such as Islamic states that prohibit the marriage of a Muslim woman to a non-Muslim). [5] Territorial and sectarian impediments which are excluded for violating public policy, such as a law prohibiting marriage based on color, as was the case under apartheid law in South Africa previously do not fall under this. [6]

Algerian law, in turn, adopts distributive application in the text of Article 11 of the Civil Code referred to above, and reinforced this in Article 97 of the Civil Status Code by stating that the Algerian party is required not to violate the fundamental conditions required by Algerian law to conclude a marriage contract; however, if it concerns impediments, their rule is always cumulative application. [7]

Second Subsection: The Role of Nationality Regarding Formal Conditions of Marriage

If nationality plays a primary role regarding the substantive conditions of marriage as the sole connecting factor, it plays a secondary role regarding formal conditions since it is an optional connecting factor competing with other criteria. In this regard, we find that some states dedicated an independent choice-of-law rule to the form of marriage, whereas other states did not explicitly stipulate that, but rather subjected it to the general rule concerning contracts, such as Egyptian, Syrian, Libyan, and Algerian law. This can be understood from the text of Article 19 of the Civil Code [8], which provides that the form of marriage is subject either to the law of the place of its celebration, the common national law of the spouses, or the law of their common domicile which applies to its substantive provisions and is the same as the national law of the spouses. Thereby, the Algerian legislator made the locus regit actum rule an optional rule, similar to most modern legislations, provided that it also adopted the nationality connecting factor. It permitted its citizens to conclude their marriage before its diplomatic and consular missions abroad. This jurisdiction, affirmed by various international treaties [9], is evident through the text of Article 96 of the Civil Status Code which resembles Article 48 of the French Civil Code considering every civil status record for Algerians issued in a foreign country valid if drawn up by diplomatic agents or consuls according to Algerian law. Furthermore, as understood from the text of Article 97 of the

Civil Status Code, a marriage celebrated in a foreign country between an Algerian man and a foreign woman is considered valid and takes place before Algerian consuls according to Algerian law.[10]

Consequently, the Algerian legislator gave its citizens abroad the option either to conclude their marriage according to the local form or before diplomatic agents and Algerian consuls, provided both spouses are Algerian. However, if the marriage is mixed where the husband is Algerian and the wife is a foreign national holding the nationality of the host country, or if she is from a nationality other than that of the host country then this marriage takes place only in the country that will determine the measures. Since the aforementioned text did not address the marriage of an Algerian woman to a foreign man, we can say that it falls outside the jurisdiction of diplomatic bodies to celebrate. Nevertheless, it is noted that a marriage concluded through diplomatic bodies raises a issue regarding the extent of its enforceability in the state of celebration, because the latter must recognize this jurisdiction for the foreign diplomatic corps, especially since some states do not permit it, such as German and Swiss law, which make the *locus regit actum* rule mandatory even for foreigners.

In this regard, the Algerian legislator like the French legislator applies the principle of reciprocity, meaning that foreign nationals are not permitted to conclude their marriage before their consulates within Algerian national territory unless their country allows Algerians to do so, provided that both foreign spouses share the same nationality as the consul. However, if only one spouse holds that nationality and the other is a foreign national according to the predominant opinion [11], the marriage is not validly concluded unless local forms required by Algerian law are observed. This is based on the proper interpretation of Article 19 of the Civil Code, which does not permit the marriage of foreigners according to their national law before their diplomatic bodies unless they share a single nationality; if they are of two different nationalities, the local form becomes mandatory.

Section 2: The Role of Nationality Regarding the Effects of Marriage

The effects of marriage refer to the set of rights and obligations that arise from it, which may be personal effects or financial effects. The Algerian legislator (like most Arab legislations) subjected them to the law of the husband's nationality at the time of marriage celebration. This is because legally subjecting any relationship to two laws simultaneously is technically impossible; therefore, it was necessary to prioritize one of them: either the husband's law or the wife's law. Naturally, preference was given to the husband's law as the head of the family [12]. French case law also previously adopted this view, though it later retreated from it taking into account the principle of equality between men and women, subjecting marital effects excluding financial regimes pursuant to paragraph 3 of Article 3 of the French Civil Code to the law of the spouses' common nationality. In case of differing nationalities, the law of their common domicile applies, and if no common domicile exists, the law of the forum (*lex fori*) applies [13]. The effects of marriage remain subject to the husband's law at the time of marriage celebration because they were defined when the marriage originated, and the wife accepted them at that time; thus, it is unfair for them to alter due to a change in the husband's nationality, even if he acquires his wife's nationality [14]. Accordingly, what is the concept of the personal and financial effects of marriage? And what is the scope of applying nationality law to them?

First Subsection: Concept of Personal and Financial Effects of Marriage

Personal effects of marriage refer to those mutual rights and duties between spouses, such as the wife's right to the dower (*mahr*), maintenance (*nafaqah*), her right to bear her husband's surname, fairness in cases of polygamy, the husband's right to obedience and discipline, the duty of mutual fidelity, and cohabitation, among others [15]. Financial effects refer to those financial rights and obligations arising from the marriage contract between spouses, such as the duty to maintain the wife. Arab and Islamic countries do not recognize a complex matrimonial property regime because the general rule is the separation of assets between spouses; the husband is the head of the family and bears the duty to support his wife solely from his funds, while the wife enjoys full legal capacity to manage, dispose of, and invest her assets independently, and may enter into contracts even with her husband regarding her property management. This contrasts with Western countries, which recognize what is known as the matrimonial property regime meaning the set of legal or agreed-upon rules between spouses, categorized into three well-known systems:

1. Community Property System (*Régime de communauté*): Where spouses share assets allocated to family needs and debts arising therefrom. Under this system, the husband manages financial affairs subject to the wife's consent for significant transactions. Upon dissolution of the marriage, shared assets are divided. It takes three forms: general community, community of movables and acquisitions, or reduced community.
2. Separation of Property System (*Régime de séparation de biens*): In contrast, each spouse retains freedom of disposition, enjoyment, and management of their private assets, while both contribute to family expenses.
3. Dotal System (*Régime dotal*): Where the wife provided part of her assets as a dowry for the husband to manage, exploit, and use for family expenses, while prohibiting him from disposing of it. Assets outside this dowry remained under her exclusive management and disposition [16].

Second Subsection: Scope of Applying Nationality Law Regarding the Effects of Marriage

Since the text of Article 11 of the Algerian Civil Code regarding marital effects is general and absolute, the law of the husband's nationality at the time of marriage celebration governs all such effects, whether personal or financial. Regarding financial effects, although the Algerian legislator generally adopts the principle of independence and separation of marital assets, practical outcomes demonstrated otherwise, giving rise to what is termed legal independence alongside actual union of marital assets [17]. This led the Algerian legislator to amend Article 37 of the Family Code, allowing spouses to

agree either in the marriage contract itself or in a subsequent official deed upon shared property acquired during marriage and the proportion allocated to each. Thus, the legislator permitted spouses to choose their desired financial regime as an exception to the general rule in paragraph 1 of Article 37.

Algerian legislation considers the matrimonial property regime as part of personal status, following the approach of Italian and German law [18], specifically characterising it as part of the effects of marriage. This contrasts with French law, which excludes financial effects from the choice-of-law rule governing marital effects and subjects matrimonial regimes to the doctrine of contract autonomy (*law of the parties' intent*) a traditional rule in France tracing back in its origins back to Dumoulin's jurisprudence, who gave a legal opinion in the "GANEY" marital regime case in 1525, subjecting their financial regime to the law of the domicile in which they settled after marriage, as their intent was presumed to choose it. Therefore, the law of the husband's nationality at the time of marriage celebration under Algerian legislation determines the extent of the spouses' freedom in their property agreement during marriage, as well as in modifying that stipulation during marriage, and in determining the applicable legal regime if the spouses omit to agree on their property regime. It is also referred to in order to ascertain the extent of the spouses' freedom to select another regime that is, the scope of their freedom in the marriage contract. Furthermore, this law governs all personal effects of marriage; however, legal scholars have differed regarding the characterization of certain issues as to whether they are classified under personal effects of marriage or not, and consequently the application of nationality law to them, namely: maintenance (*nafaqah*), the legal capacity of a married woman, and the surname.

1 – Maintenance (*Nafaqah*): The maintenance referred to here arises directly as a result of the marriage contract; thus, it falls under the personal effects of marriage rather than financial effects, even though it possesses a financial character, nor is it akin to maintenance between relatives, which is subject to the law of the debtor. Therefore, the prevailing opinion in Egypt and Algeria [19] favors subjecting it to the law of the husband's nationality at the time of marriage celebration, considering it one of its effects. French jurisprudence likewise considered it as such prior to the entry into force of the Hague Convention of October 2, 1973; under which the Court of Cassation applied the maintenance rule in the case of the *Chammoui* Tunisian couple sharing joint nationality, and when the husband changed his nationality, it applied the law of their common domicile [20]. As for provisional maintenance claimed by the wife during a divorce lawsuit, it must be subject to the law of the forum (*lex fori*) as it is a matter of public policy [21].

2 – Legal Capacity of a Married Woman: Marriage affects the woman's legal capacity under certain legal systems. To determine the law governing it, jurists are divided between two hypotheses: if the purpose of establishing a restriction on a married woman's legal capacity is to preserve the husband's authority as head of the family, it is subject to the law governing the effects of marriage. Conversely, if the objective is to protect her against her own vulnerability considering her gender, the personal law of the wife that is, her nationality law is the competent law. Nevertheless, some jurists argue that if the married woman's incapacity is restricted to certain legal transactions only, it is treated as a special incapacity subject to the law governing the transaction itself. As for Arab laws and Islamic Sharia, they do not restrict a woman's capacity due to marriage; her capacity remains subject to her personal law in Algerian law, without being subjected to the law governing the effects of marriage.

3 – The Surname (*Name*): Some legal systems mandate that a married woman bear her husband's surname similar to French law, which provides more progressive rules in this regard by allowing the wife bearing her husband's name to retain it despite his death, or in the event of divorce due to the breakdown of shared life requested by the husband, whereas she loses this right in other circumstances unless authorized by her husband or the court in case of a special interest related to her or her children [22]. This contrasts with Islamic countries, where marriage has no impact on the wife's surname, which remains preserved as it was prior to marriage. Regarding the law governing a married woman's surname, two theories compete: it is either subject to her personal law as an element of her personal status, or subject to the law governing the effects of marriage, given that some countries attach an effect to marriage regarding the surname. In this regard, predominant French jurisprudence and case law lean toward applying the law governing the effects of marriage. [23] However, a ministerial response issued in 1978 confirmed that whether a French wife may bear the name composed of her own name and her husband's name is subject to her nationality law. Germany adopts this solution as well. This matter is not of significant importance in Algerian law; therefore, dominant jurisprudence prefers applying the law governing the effects of marriage to it [24].

Finally, it should be noted that the nationality law governing the effects of marriage does not apply to cases concerning the location of property, as long as they are subject to the law of their location such as the wife's legal charge (*hypothèque*) over her husband's property, which in terms of its existence is subject to the husband's law at the time of marriage celebration, and in terms of execution to the law of the location of property.

Second Topic: The Role of Nationality Regarding the Dissolution of the Marital Bond

A marriage contract usually terminates by death, divorce, judicial divorce (*tatliq*), or physical separation. It ends upon the death of one spouse, by unilateral divorce by the husband, or by judicial separation (*tatliq*) based on specific legal grounds upon the wife's request, or by physical separation a system recognized in Western legal systems that leads to separation between spouses and the interruption of their shared life without resulting in the termination of the marital bond except after a certain period of separation and a judicial decree to that effect [25].

If the termination of marriage by death does not raise conflict-of-law issues, other grounds spark clear conflict due to differing legislative perspectives on marriage dissolution and its causes. Islamic Sharia rules that marriage is a bond

capable of dissolution, contrary to Catholic Christian denominations which consider this bond permanent and non-terminable except by death a position previously held in Spain and Italy [26]. While Islamic Sharia permits divorce by the husband's unilateral will, judicial divorce (*tatliq*), or *khul'* at the wife's request in specific cases, Western countries reject these systems, considering them contrary to public policy. Meanwhile, they allow judicial divorce (*divorce*) by court decree based on grounds specified by law in a lawsuit filed by either spouse, and they permit physical separation, which is rejected in Islamic countries and contrary to public policy there. Given this divergence across laws, divorce continues to cause numerous conflicts whenever a foreign element is involved, whether seeking a judgment or enforcing one [27]. What is the applicable law within conflict of laws? And what is the scope of applying this law?

First Requirement: Nationality as a Connecting Factor in the Dissolution of Marriage

Most legislations especially European and Arab ones refer divorce to the law of nationality despite their differences: some apply the law of the last common nationality, failing which, the husband's nationality at the time of marriage celebration; others apply the law of common nationality, failing which, the law of common domicile, failing which, the law of the forum (*lex fori*); and others refer it to the law governing marital effects, or the plaintiff's nationality law at filing, or his nationality law at marriage celebration [28]. Regarding French law, jurisprudence subjected it to the law of common nationality of the spouses; if their nationalities differed, both laws applied distributively. This was ruled by the French Court of Cassation in the case of *Mrs. Ferrari*, an Italian woman married to an Italian, who obtained a consensual physical separation from him. She moved to France and petitioned for a divorce into full dissolution under French law. The Court of Cassation rejected her petition because the law of common nationality Italian law prohibited divorce. Thus, she restored her French nationality to petition for divorce under it, and the French Court of Cassation granted her request on March 14, 1928, on the basis of distributive application. However, French jurisprudence later reverted to applying the law of common domicile "*Rivière*" [29] Spanish spouses residing in France, such that French law was applied to them in its capacity as the law of their common domicile which permits divorce while excluding the law of their common nationality. However, if the spouses share neither domicile nor nationality, the law of the forum (*lex fori*) applied. The French legislator intervened by amending Article 310 of the Civil Code on July 11, 1975, making the application of French law regarding judicial divorce (*tatliq*) and physical separation conditional upon both spouses possessing French nationality, or if both have a common domicile in France; in cases where they do not share a common domicile, the law of the forum applies if no foreign law declares its jurisdiction.

In contrast, the Algerian legislator unified the methods of marriage dissolution, subjecting them all to the law of the husband's nationality at the time the lawsuit is filed. Some legal scholars [30] view that the legislator thereby rejected unilateral divorce by the husband's sole will, as dictated by Islamic Sharia, on the premise that a unilateral divorce issued by the husband cannot be recognized legally unless a court judgment is issued. However, the predominant scholarly opinion [31] holds that divorce is legally established without a judgment, and if a judgment is issued, it is merely declaratory rather than constitutive unlike judicial divorce (*tatliq*). This is because the legislator did not restrict the husband's will by requiring specific grounds to accept a divorce petition; whenever the husband seeks divorce, the judge is obliged to grant it, even if he acts arbitrarily though in such cases, the other spouse is entitled to an award of appropriate compensation. It is noted that under the new amendment to Paragraph 2 of Article 12 of the Civil Code, the Algerian legislator improved by addressing physical separation and attaching it to the law governing marriage, making it possible for disputes involving spouses whose personal status system recognizes this regime to be raised, thereby relieving embarrassment for the Algerian judge.

Nevertheless, extensive criticism has been directed at this article because assigning jurisdiction to the law of the husband's nationality at the time of filing the lawsuit causes the marital bond to dissolve under a law the wife was not subject to and could not foresee at the time of marriage celebration, thereby adversely affecting her acquired rights especially if the husband's nationality changes between marriage celebration and the time of filing for divorce or *tatliq*, while his law at the time of celebration permitted divorce or *tatliq* whereas his law at filing prohibits it, or vice versa. On the other hand, assigning jurisdiction to the husband's law violates the principle of equality between man and woman: a marriage bond established initially between spouses based on their common national law logically requires that its dissolution be subject to that same law. This approach was adopted by the Hague Convention on Judicial Divorce and Separation [32] in Article 8, stating that if the spouses are not of a single nationality, the law of their last common nationality applies a principle enshrined in several legislations [33].

Second Requirement: Scope of Applying the Law of the Husband's Nationality at the Time of Filing the Lawsuit

The law of the husband's nationality at the time of filing the lawsuit determines the admissibility of divorce, judicial divorce (*tatliq*), and physical separation, as well as their grounds and the validity conditions of each regarding agency (*wakalah*), who among the spouses may demand them, and the restrictions and required timeframes to convert physical separation into divorce. Reference is also made to this law to determine whether the right to divorce is recognized in the state of this law, and it governs substantive rules regarding evidence such as identifying who bears the burden of proof and determining admissible evidence in the lawsuit and its probative force.

As for rules relating to proof procedures and proceedings for requesting judicial divorce (*tatliq*) and separation in general, they fall outside the scope of nationality law and are governed by the law of the forum (*lex fori*). This law also governs provisional and temporary measures taken during the divorce or *tatliq* lawsuit to preserve the interests of each spouse and children such as setting temporary maintenance for the wife, granting her residence in the marital home [34],

and, regarding physical separation, determining which marital obligations fall away as a result of the separation judgment, its duration, and how to convert it into divorce, and determining the method by which separation ends, as these are subject to the law governing divorce, judicial divorce (*tatliq*), or separation. However, if those effects relate to the personal status of the divorcees such as the right of the spouses to enter into a new marriage contract, the duration of the waiting period (*'iddah*), and the woman's right to reclaim her pre-marriage surname they are subject to the personal law of the spouses, because they transcend the idea of regulating the termination of marital life and concern each spouse individually [35]. Moreover, the effect of marriage dissolution on the spouses' financial regime is excluded from the scope of marriage dissolution effects; thus, it is subject to the law of the husband's nationality at the time of marriage celebration, as it constitutes part of the financial effects of marriage. Similarly, regarding the effect of divorce or *tatliq* on the husband's status concerning inheritance, it is subject to the law applicable to inheritance matters in general.

Conclusion:

The subject of nationality holds great importance, as it constitutes one of the independent and main branches of private international law whenever it concerns the bond of nationality as distinct from other topics whether regarding its acquisition, loss, deprivation, or conditions of enjoyment. It presents itself as a preliminary issue to resolve any dispute involving a foreign element, serving as the criterion for granting citizenship, through which a distinction is drawn between foreigners and nationals, along with the legal consequences thereof at both national and international levels. Regarding the status of foreigners, nationality serves as a criterion for establishing international judicial jurisdiction for national courts whenever one of the parties to the relationship holds national citizenship. As for the conflict of laws, nationality acts as a connecting factor guiding the judge toward the law applicable to relationships containing a foreign element in personal status matters, given that personal status is linked to the individual and distinguishes them from surrounding individuals. Nationality represents the political and legal bond tying an individual to a specific state, making them spiritually affiliated with its society; thus, it is natural for nationality to be sufficient in itself to attract the legislative jurisdiction of the state's law to which the individual belongs regarding these status matters.

Unlike other elements of individual personal status, family bond disputes arising within private international law are regulated across comparative legislations through explicit choice-of-law rules, as the Algerian legislator did in Articles 11 through 16 of the Civil Code. Regarding Article 11, it subjects the substantive conditions for marriage celebration to the national law of both spouses an objective choice of law because marriage creates a shared legal regime between individuals of different nationalities and customs that cannot validly arise except by observing the laws of both parties, provided each state has established rules to protect its own families, while respecting the principle of equality between men and women. As for Article 12 of the Civil Code, it assigned the effects of marriage, its celebration, and its dissolution to the law of the husband's nationality at the time of marriage celebration unlike other Arab countries that restricted this law to cases of judicial divorce (*tatliq*) and physical separation, while subjecting divorce to the law of the husband's nationality at the time it is pronounced.

This choice-of-law rule highlights the role played by the husband in this field, as he still reigns over the family throne in Arab countries as head of the family and provider. Nevertheless, this article faces numerous criticisms because it fails to respect the principle of equality between men and women, particularly the paragraph concerning divorce, as it undermines women's rights and infringes upon their legitimate expectations that were based on the husband's nationality law at the time the lawsuit is filed. Furthermore, the husband's nationality may change between the time of marriage celebration and its dissolution, where his law at celebration might permit the dissolution of the marital bond while his law at the time of filing prohibits it, or vice versa. It is clear that this exception to applying nationality law in favor of the forum law (*lex fori*) was decided to protect the wife's interest by applying her law in these situations whenever the husband is a foreigner; however, if the husband is a national, the relationship remains subject to Algerian law pursuant to the general rule set forth in Articles 11 and 12 of the Civil Code, rather than under this exception. Among the advantages of this exception is also that it leads to recognizing the valid marriage under the Muslim husband's law, which would otherwise be void under the wife's law.

Despite this, this exception has not escaped criticism either, as it leads to anomalous situations namely, applying Algerian law to spouses who both became foreigners at a date subsequent to marriage or at the time of filing the lawsuit, especially if they acquired a new common nationality, whereas Algerian law does not apply to spouses who were foreigners at the time of marriage celebration and then acquired Algerian nationality at a subsequent date or at the time of filing the lawsuit. As long as the family has become national in all its elements, it is presumed that the effects of marriage should be subject to Algerian law if both spouses acquired Algerian nationality at a date subsequent to marriage; similarly, regarding the dissolution of marriage, if one of the spouses is Algerian at the time of filing the lawsuit or if both acquired this nationality at that time.

In any case, the role of nationality as a tool for resolving conflict-of-law problems cannot be fully demonstrated merely by showing that it is the choice-of-law connecting factor governing personal status, but rather extends to how nationality law is determined and applied. This is due to the difficulties encountered that hinder determining the competent nationality law to govern the dispute or its application. However, it must be emphasized here that states must reduce the problems that may confront the nationality criterion by combating the phenomena of dual nationality and statelessness. States must be rational in granting their nationality, granting it only to those connected to them by a genuine and effective bond, and establishing solid grounds for losing their nationality for individuals who acquired another nationality and lost any

spiritual, political, or social connection to it. Furthermore, the country of residence must grant stateless persons its nationality after a sufficient period. States with multi-religious or multi-legal systems must provide necessary solutions to determine the competent internal law among their internal legal systems. Regarding the public policy defense, states should use it in a moderate framework and only where there is a blatant violation of prevailing values in the law of the forum (*lex fori*); therefore, foreign legal institutions known to them should be recognized even if they violate domestic public policy, as long as this does not harm national interests such as recognizing adoption and physical separation for foreigners in their purely foreign relations. This was done by the Algerian legislator, which improved by explicitly providing for these two systems in the Civil Code amendment of 2005, so that the Algerian judge does not refuse to adjudicate them on grounds of public policy violation.

Footnotes:

1. na'um syouti, private international law, (n.p.), directorate of university books, aleppo, syria – 1966–1967, p. 695.
2. ahmad abd al-karim salama, private international law, first edition, dar al-nahda al-arabiyya, cairo, egypt, 2008, p. 87.
3. ahmad abd al-karim salama, private international law, first edition, previous reference, p. 84.
4. zerrouki al-tayyib, algerian private international law, part one: conflict of laws, second edition, matba'at al-fasila, algeria, 2008, p. 151.
5. fuad abd al-mun'im riad and wasmia rashid, the intermediate guide to private international law, part two: conflict of laws, (n.p.), dar al-nahda al-arabiyya, cairo, egypt, 1974, p. 255.
6. zerrouki al-tayyib, algerian private international law, part one: conflict of laws, previous reference, p. 162.
7. ordinance no. 70/20 of february 19, 1970, amended and supplemented by law no. 08/14 of august 09, 2014, and law no. 03/17 of january 10, 2017.
8. note that before the amendment of june 20, 2005, this article did not provide for the rule of common domicile, nor the law governing its substantive provisions.
9. such as the vienna convention of april 24, 1948, ratified by algeria on march 04, 1964; the hague convention of 1978 relating to the celebration and recognition of the validity of marriages, which allowed them to do so provided the accrediting states do not prohibit them; and the franco-algerian agreement dated may 24, 1974, which authorizes consuls to celebrate the marriage of two spouses holding the nationality of the sending state. see mohand issad, private international law, part one: choice-of-law rules, office des publications universitaires (n.p.), algeria, 1989, p. 303.
10. nadia fodil, application of the law of the place of contract execution, first edition, dar houma, algeria, 2006, p. 59.
11. this view is shared by dr. zerrouki al-tayyib, previous reference, p. 168.
12. muhammad kamal fahmi, principles of private international law, first edition, mu'assasat al-thaqafa al-jami'iyya, alexandria, egypt, 2006, p. 544.
13. pierre mayer, droit international privé, 5th edition, montchrestien, paris (lgd), 1996, p. 371.
14. this situation led some jurisprudence to favor adopting the law of the new common nationality, which is the opinion of dr. muhammad kamal fahmi, previous reference, p. 340, as well as fuad abd al-mun'im riad, previous reference, p. 268.
15. article 36 of law no. 84/11 of june 09, 1984, amended and supplemented by ordinance no. 05/02 of february 27, 2005, containing the family code.
16. ali ali sulaiman, notes on algerian private international law, (n.p.), office des publications universitaires, algeria, 2000, pp. 74, 75.
17. this view was also adopted by the hague convention of 1905.
18. driba amine, choice-of-law rules relating to marriage and its dissolution in private international law: a comparative study, master's thesis in private law, faculty of law and political science, abou bekr belkaïd university, tlemcen, 2008, p. 24.
19. a'rab belkacem, algerian private international law: conflict of laws, (n.p.), dar al-fikr al-jami'i, alexandria, egypt, 1997, p. 252.
20. na'um syouti, private international rights, previous reference, p. 714.
21. hisham ali sadiq, hafiza al-sayyid al-haddad, private international law, volume two: conflict of laws, (n.p.), dar al-fikr al-jami'i, alexandria, egypt, 1999, p. 173.
22. nashwar hamdou zaki, "the right to a name in algerian law," journal of legal and administrative sciences, faculty of law and political science, abou bekr belkaïd university, tlemcen, issue 6, 2008, pp. 147, 148.
23. a'rab belkacem, algerian private international law: conflict of laws, previous reference, p. 253.
24. zerrouki al-tayyib, algerian private international law, part one: conflict of laws, previous reference, p. 174.
25. note that physical separation does not lead to divorce in all cases; rather, the spouses may return to their former joint marital life prior to separation.
26. belhadj el-arbi, the concise commentary on the algerian family code, part one: marriage and divorce, second edition, dar houma, algeria, 2015, p. 212.
27. youssef fatiha, "some rules of international conflict in family relations," algerian journal of legal, economic and political sciences, faculty of law and political science, ben youcef ben khedda university, algiers, issue 02, 1999, p. 57.
28. article 17 of the german law of 1986; zerrouki al-tayyib, algerian private international law, part one: conflict of laws, previous reference, p. 179.
29. cass. civ. 1ère section, 17/04/1953, see gutmann-dammel, droit international privé, dalloz, 3rd edition, 2002, 149.

30. ali ali sulaiman, notes on algerian private international law, previous reference, p. 76.
31. zerrouki al-tayyib, algerian private international law, part one: conflict of laws, previous reference, p. 181.
32. hague convention of june 12, 1902.
33. a'rab belkacem, algerian private international law: conflict of laws, previous reference, p. 257.
34. this was also adopted by french case law; a'rab belkacem, algerian private international law: conflict of laws, previous reference, p. 259.
35. a'rab belkacem, algerian private international law: conflict of laws, previous reference, pp. 260, 261; and zerrouki al-tayyib, algerian private international law, part one: conflict of laws, previous reference, p. 184.