

No Adoption in France for Algerian/Moroccan Children

Children from Algeria or Morocco may not be adopted in France. This is  because under French law, the law of the child controls the issue of whether adoption is possible at all. Thus, children from countries where adoption is unknown are unadoptable. As there is no adoption in Islam, children from countries such as Algeria and Morocco may not be adopted.

The rule is not new. It is the result of a statutory intervention of 2001, which has amended the Civil Code.

Article 370-3 of the Civil Code now provides:

The requirements for adoption are governed by the national law of the adopter or, in case of adoption by two spouses, by the law which governs the effects of their union. Adoption however may not be ordered where it is prohibited by the national laws of both spouses.

Adoption of a foreign minor may not be ordered where his personal law prohibits that institution, unless the minor was born and resides usually in France.

Whatever the applicable law may be, adoption requires the consent of the statutory representative of the child. Consent must be free, obtained without any compensation, subsequent to the birth of the child and informed as to the consequences of adoption, specially where it is given for the purpose of a plenary adoption, as to the entire and irrevocable character of the breaking off of the pre-existing parental bond.

The law is crystal clear, but this does not prevent French couples or individuals to try to adopt Algerian or Moroccan children. They find the children in Algeria or Morocco, come back to France, ask a French court to grant the adoption, and ... win before lower courts, including courts of appeal! French prosecutors then appeal to the supreme court for private and criminal matters (*Cour de cassation*), which allows the appeal and sets aside the judgment granting the adoption.

Only last summer, the *Cour de cassation* allowed the appeal against a judgment of the court of appeal of Limoges. The adopter was a Franco-Algerian woman who had found the child in Algeria where it had been abandoned at birth. The woman obtained from Algerian authorities the right to look after the child (*kafala*), came back to France and sought a judgment of adoption. She won before the first instance court of Limoges, then before the Court of appeal. In a judgment of July 8, 2008, the *Cour de cassation* held that *kafala* was not an adoption, and that, as the Court of appeal had noticed in its judgment, Algerian law does not allow adoption. The judgment and the adoption were set aside. On October 10, 2006, the *Cour de cassation* had already made the same decision in respect of an Algerian and a Moroccan *kafala*. In each of these cases, the lower courts had resisted and granted the adoption.

✘ So, here are, on the one hand, tons of French couples who cannot have children, are trying to adopt, and cannot find what they are looking for. On the other hand, it is likely that there are quite a few, if not very many, children in Algeria or Morocco who have been abandoned by their parents and would have a much better life with these couples. If these couples could adopt these children, everybody would be happy. This may well appear clearly to French judges all over France, since so many lower courts just look for a way to allow the adoption. And indeed, it might be that the *Cour de cassation* does not disagree, since its case law before the reform was precisely that, as long as the person in charge of the child in the foreign country had actually understood and consented to the change of parenthood, whether the law of origin of the child allowed was irrelevant.

But now, the law has changed, and the *Cour de cassation* probably thinks that it does not have the legitimacy to challenge the will of the French parliament.

How could the French society end up with a rule which, in most cases, so patently hurts the interests of all the persons involved?