

French Muslims Getting Divorced Back Home

In 2007, the French supreme court for private matters (*Cour de cassation*) ruled five times on the recognition in France of Islamic divorces obtained in Algeria (judgments of 10 July 2007, 19 September 2007, 17 October 2007, 31 October 2007) or in Morocco (judgment of 22 May 2007). Even by the standard of a civil law supreme court which delivers thousands of judgments each year, this is a high number.



The facts of the cases are almost invariably the same. The couple was of Algerian (or Moroccan) origin. They were sometimes born there, or even had got married there. They then emigrated to France, where they have been living ever since. They sometimes acquired French citizenship.

It seems that it is normally the wife who wants the divorce. She therefore decides to sue, in France. But the husband then travels to Algeria or Morocco and gets an Islamic divorce (*Talaq*) there. He subsequently attempts to rely on the res judicata effect of the Moroccan judgment to stop the French proceedings. This is where the French court has to decide whether the foreign judgment can be recognised in France and thus have a res judicata effect.

The reasons why the wife chooses France, and the husband their country of origin, are quite simple. The wife seeks an allowance for her and the children. A French court would give her much more than an Algerian court. And in any case, under Islamic law, at least as a matter of principle (there are some variations among sunni schools), women may not ask for divorce. This is a right which belongs to men only.

The practice could appear as shocking for a variety of reasons. First, it seems that husbands seek divorce in Algeria or Morocco to avoid French courts and the French law of divorce. Second, it appears that, typically, women will not even be called in the foreign proceedings, which is contrary to the basic understanding of due process. At the same time, this is not completely illogical, since they have no say in the proceedings anyway (although it seems that they sometimes have a say

in respect of the financial consequences of the divorce). Third, Islamic law of divorce is essentially unequal.

For long, the *Cour de cassation* was unwilling to rule that Islamic divorces ought to be denied recognition because they are the product of a law which does not consider men and women equal. The court would still deny recognition to most Islamic divorces, but on the ground that the wife had not been called to the foreign proceedings. Alternatively, the court would sometimes rule that the husband had committed a *fraude à la loi*, i.e. had initiated proceedings in Algeria for the sole purpose of avoiding French proceedings. However, such intent was often difficult to prove. After all, he was Algerian, and initiating proceedings where he was from was not unreasonable. However, this method led the court to recognize some of these divorces. For instance, in 2001, it accepted to recognize an Algerian divorce decision where the wife had participated to the foreign proceedings and had been awarded a (tiny) allowance.

In 2004, the *Cour de cassation* changed its doctrine and ruled that Islamic divorces are contrary to French public policy on the more general and abstract ground that divorce in Algerian or Moroccan law is in the hands of the sole husband, which infringes the principle of equality between spouses in the dissolution of marriage. The Islamic law of divorce has been rejected abstractly ever since. Formally, the court has ruled that the principle of equality between spouses flows from the European Convention of Human Rights (Article 5, Protocol VII).

The five 2007 judgments all deny recognition to the Algerian or Moroccan divorces on that ground. The law now seems settled. It is thus quite surprising that the court still has to rule so often on the issue. France has certainly a large Algerian and Moroccan population (and generally has the biggest Muslim population in Europe), which explains why so many disputes arise. One wonders, however, why the costs of litigation up to the supreme court do not discourage husbands. My guess is that, for some reason, they do not bear them.