

Acquisition of Algerian Nationality through Marriage

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Abstract:

Marriage is considered one of the legal means of acquiring Algerian nationality according to the amended Nationality Law. A foreign man or woman married to an Algerian spouse may apply for Algerian nationality after three years of actual marriage and habitual residence in Algeria. The marriage must be legally valid, the applicant must have good conduct, and must prove integration into Algerian society. The application is submitted to the Minister of Justice along with the required documents, and nationality is granted by presidential decree. This mechanism aims to strengthen family and social ties and facilitate the integration of foreign spouses into society. However, the question remains whether these conditions truly facilitate the process of acquiring Algerian nationality for the foreign spouse or, on the contrary, complicate it — this is the focus of our study.

Introduction:

Nationality is one of the most complex and sensitive systems affecting the state, requiring special attention, especially in selecting those who become part of its citizenry, which constitutes the foundation of stability and security. Before and during French colonization, Algeria did not recognize nationality in its modern sense. Therefore, establishing a specific nationality law was among the first priorities of the Algerian legislator after independence, resulting in the enactment of the Nationality Law on March 27, 1963, followed by Ordinance No. 70-86 to embody national identity and sovereignty.

This study focuses on the position of the Algerian legislator regarding the acquisition of nationality through marriage under Ordinance No. 05-01, amending and supplementing

Ordinance No. 70-86, the Algerian Nationality Law. This amendment aimed to keep pace with societal development and transformations in various aspects of life, consistent with progressive nationality systems that recognize diverse personal circumstances and remove obstacles hindering human development and participation in building an inclusive society rejecting discrimination — especially gender discrimination. This right has been enshrined in several provisions of the Algerian Constitution, including Articles 35, 36, and 37.

Given the importance and sensitivity of this topic, the study addresses the following problem: *Is marriage truly a sufficient reason for acquiring Algerian nationality, considering the conditions set forth by the Algerian legislator in the amended Nationality Law?* To answer this, the descriptive and analytical method is used to present the legislator's position, evaluate its consistency with ratified international conventions, and analyze the relevant provisions through two main axes:

1. Conditions for acquiring Algerian nationality by marriage.
2. The position of international conventions on marriage as a ground for acquiring nationality and the extent to which Algerian law reflects these conventions.

Chapter One: Conditions for Acquiring Algerian Nationality by Marriage

International attention to women's nationality was reflected in the Algerian Nationality Law of 1970, as amended by Ordinance No. 05-01. While the 1970 Law did not attribute any effect of marriage on nationality, the amendment made marriage one of the grounds for acquiring Algerian nationality by changing the title of Chapter Three from "Acquisition of Nationality by Operation of Law" to "Acquisition of Nationality by Marriage."

The Algerian legislator did not grant automatic nationality to a foreign woman marrying an Algerian man; she retains her original nationality. Thus, marriage has no direct or automatic effect on her nationality. However, she may acquire her husband's nationality upon request, similar to a foreign man marrying an Algerian woman, provided the conditions stipulated in the amended Article 09 bis of the Nationality Law are met.

Article 09 bis states:

"Algerian nationality may be acquired by marriage to an Algerian man or woman, by decree, when the following conditions are met:

- The marriage is legal and has been effectively in existence for at least three years at the time of the application for naturalization.
- The applicant has habitual and regular residence in Algeria for at least two years.
- The applicant has good conduct and behavior.
- The applicant proves sufficient means of livelihood.

– A criminal conviction abroad may be disregarded.”

Based on this text, the following conditions can be analyzed:

First Condition: Marriage to an Algerian Man or Woman

This is the fundamental condition and the active reason for a foreign spouse to acquire Algerian nationality. The Algerian legislator equates the marriage of a foreign man to an Algerian woman and a foreign woman to an Algerian man. The Algerian spouse's nationality need not be original; it may be acquired. The marriage must be:

- a. **Legally valid:** The marriage must comply with legal formalities and meet all its essential conditions; customary or informal marriages are not accepted unless validated by judicial ruling.
- b. **Effectively lasting for at least three years:** This requirement prevents fraudulent or sham marriages intended solely to obtain nationality under simplified conditions. The law treats acquisition of nationality through marriage as naturalization (“application for naturalization”), referring to Article 10 of the Nationality Law.

Second Condition: Regular Residence in Algeria for at Least Two Years

This condition ensures the applicant's integration into Algerian society. Two years of residence, following three years of marriage, suffice to prove such integration.

Third Condition: Good Conduct and Behavior

This prevents persons with criminal or deviant behavior from entering Algerian society. It is proven through the applicant's criminal record. Good conduct is required both during residence in Algeria and abroad. However, if the conviction was by a foreign court, the competent Algerian authority retains discretionary power to disregard it, as criminal laws vary across countries.

Fourth Condition: Proof of Sufficient Means of Livelihood

This ensures that the applicant will not become a burden on the state. Proof may include employment, a work certificate, or income statement. Although this condition applies generally, it is arguably unnecessary for a foreign woman married to an Algerian man, as he is responsible for financial support.

Fifth Condition: Application and Presidential Decree

The applicant must submit a formal request to the competent authority, which has discretionary power to approve or deny it. Nationality is granted by presidential decree upon recommendation from the Minister of Justice. Notably, the amended law removed the 12-month response period previously required of the Minister, making the waiting period indefinite.

Overall, the current law adopts a *softened principle of independence of nationality within the family*, easing naturalization conditions by reducing the residence period from seven to two years and removing physical and mental health requirements.

Despite these changes, in practice, the process remains lengthy and uncertain since nationality is considered a privilege granted by the state, not a right.

The law also does not address the case of an Algerian woman marrying a foreign man; she retains her nationality but may lose it upon obtaining her husband's nationality with authorization from the Minister of Justice.

Chapter Two: The Position of International Conventions on Acquisition of Nationality by Marriage

The principles of *unity* and *independence* of nationality within the family have long attracted international attention due to their social and legal implications. Initially, the dependency principle prevailed, but later international organizations began favoring independence, emphasizing women's right to retain or change their nationality voluntarily.

1. Institute of International Law (1873–1932)

The Institute, in its 1880 Oxford session and later meetings, initially leaned toward the dependency principle but gradually adopted independence, especially during its 1932 Oslo session. Its recommendations affirmed equality between spouses and that marriage should not affect the wife's nationality unless she so desires.

2. Hague Conference on the Codification of International Law (1930)

Under the League of Nations, the 1930 Hague Convention addressed the nationality of married women, particularly Article 10, which states:

“The naturalization of a husband during marriage shall not automatically affect the nationality of his wife unless she expressly consents.”

The conference encouraged states to promote gender equality in nationality laws while respecting national sovereignty.

3. Universal Declaration of Human Rights (1948)

Article 15 states:

“Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

This provision affirms that nationality is a personal right and marriage should not affect it.

4. Convention on the Political Rights of Women (1952)

This convention, which Algeria ratified in 2004, did not directly address mixed marriage and nationality but emphasized equality between men and women in all political rights — by extension, in nationality matters as well.

5. United Nations Commission on the Status of Women

Since 1948, the Commission has sought to eliminate discrimination against women, culminating in two key conventions:

a. **Convention on the Nationality of Married Women (1957)**

It established that marriage, dissolution, or a husband's change of nationality shall not automatically affect the wife's nationality. A foreign wife may acquire her husband's nationality only upon request and under simplified naturalization procedures.

b. **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)**

Preceded by the 1967 Declaration on the Elimination of Discrimination against Women, CEDAW reaffirmed equality between men and women in all rights, including nationality, and prohibited all forms of gender-based discrimination.

He emphasized the importance of granting women the rights stipulated in previous conventions, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, both issued on 16/12/1966, in addition to other rights guaranteed by the Declaration for both married and single women.

The United Nations Commission on the Status of Women began preparing the Convention on the Elimination of All Forms of Discrimination against Women in 1973, and it was adopted by the General Assembly on December 18, 1979, under Resolution No. 34/180, and entered into force on September 3, 1981, in accordance with the provisions of Article 27, after receiving the required twenty ratifications.

Upon examining the provisions of the Convention, we find that Article 9 is devoted to the issue of nationality, as it provides that:

“1. States Parties shall grant women equal rights with men to acquire, change, or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless, or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.”

It is observed that this Convention, in its Article 9, established the principle of independence of nationality within the family, whereby the nationality of the husband has no effect on that of the wife in mixed marriages. It also affirmed full equality between them in transmitting nationality to their children. In this respect, the Convention achieved a notable innovation; however, it did not take into account the consequences arising in cases where the laws of both the father's and the mother's nationalities grant original nationality based on *jus sanguinis* (right of blood) from either parent, leading to dual nationality for the children, who would hold both the father's and the mother's nationalities simultaneously.

Algeria acceded to the Convention with a reservation to paragraph 2 of Article 9; however, this reservation was later lifted after Algeria decided to establish equality between men and women in general, and particularly regarding the acquisition and loss of nationality, as well as the granting of nationality to children, pursuant to Ordinance No. 05-01, amending and supplementing the Algerian Nationality Code of 1970.

Conclusion

The Algerian legislator has sought to establish full equality between the sexes in matters of nationality, similar to other areas, as enshrined—as mentioned earlier—in Ordinance No. 05-01 amending and supplementing the Algerian Nationality Code of 1970. This ordinance addressed the issue of acquiring Algerian nationality through marriage in its Article 9 bis, in which it adopted a mitigated form of the principle of independence of nationality, allowing the foreign husband or wife to acquire Algerian nationality under the conditions set forth in the article. In doing so, the legislator sought to embody the provisions of international conventions ratified by Algeria concerning the acquisition of Algerian nationality through marriage to an Algerian man or woman alike, thereby affirming constitutionally guaranteed gender equality. However, as previously mentioned, these conditions are somewhat excessive and closely resemble those required for naturalization, particularly the condition of proving sufficient means of livelihood, which applies to a foreigner married to an Algerian woman, unlike a foreign woman married to an Algerian man, since the husband is responsible for her maintenance. Therefore, the Algerian legislator should address this issue by abolishing this condition in such cases and easing the other conditions as well, so that marriage to an Algerian man or woman becomes in itself a sufficient reason for acquiring Algerian nationality.

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