

Custody of unknown's children parentage and the problem of the family name in Algerian legislation

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Abstract:

The research aims to address the problem of the right to request a change of the family name for a foster child of unknown parentage in order to match the family name of the foster parent, in accordance with the provisions of Decree No. 20-223, dated on: August 08th, 2020, amending and supplementing to the Decree No. 71-157, dated on: June 03rd, 1971, concerning the change of name.

Through this study, we have found that despite the legislator's attempt to eliminate all the legal issues raised by the subject of a child of unknown parentage obtaining a new family name, especially concerning parentage, marriage, and inheritance, the reality has shown the difficulties faced by both the foster parent and the foster child in obtaining administrative documents.

key words: custody, child of unknown parentage, foster parent, change of family name, adoption.

Introduction:

The family name is a fundamental right of every natural person, every person has the right to have a name that distinguishes them from others and a family name that confirms their parentage to their father, this is affirmed by Article 28 of the Algerian Civil Code, which states: "Every person must have at least one family name and one or more first names, and a man's family name extends to his children."

However, we may come across children who have no origin or parentage due to illegitimate relationships, these are unknown's children parentage, and with the increasing number of this category and their presence in state-provided care institutions, it was necessary to find alternative ways to provide them with care within foster families so that they can enjoy the warmth of a family and a familial environment.

Since adoption is prohibited by Islamic law due to the potential harm it may cause, such as mixing lineages and depriving rightful heirs of their

inheritance rights, an alternative system needed to be established to safeguard the rights and dignity of unknown's children parentage and ensure their care. Islamic law recognized the system of custody, which has been adopted by Algerian legislation through various legal texts¹ addressing this category, such as the Algerian Family Law², Civil Status Law³, Nationality Law⁴, Health Law⁵, and others. Additionally, there are decrees such as Executive Decree No. 12/04 dated on January 4th, 2012, related to the model law for child protection institutions⁶. Furthermore, Algeria has ratified international conventions such as the International Convention on the Rights of the Child in 1989, which led to the enactment of Law No. 15/12 dated on July 15th, 2015 related to the child protection⁷.

The custody of unknown's parentage children holds both humanitarian and legal significance. It places the child in a familial environment, within a natural family that provides them with love, care, and attention. The foster child retains their original parentage if it is known, and if his parentage is unknown, Article 64 of the Civil Status Law applies to them, as affirmed by Article 120 of the Algerian Family Law.

Assigning a child of unknown parentage to a foster family while giving them a completely different family name from the family name of the foster family may cause significant psychological trauma when the child becomes aware of the situation, especially during adolescence. To address this, the legislator deemed it necessary to find a solution for this fostered category by allowing the foster family to give their family name to the foster child for the benefit of the child this ensures their proper upbringing. However, on the other hand, to preserve lineages, the Algerian legislator legally prohibits adoption in Article 46 of the Algerian Family Law.

To what extent does the Algerian legislator reconcile the interests of a child of unknown parentage in obtaining the family name of the foster family, and the societal interest in avoiding parentage mixing?

Answering this question requires addressing the following inquiries:

How is the custody of a child of unknown parentage carried out?

What are the legal procedures followed for a child of unknown parentage to obtain the same family name as the foster family?

In studying the subject, we have adopted an analytical approach by explaining the process of entering into a custody contract and the procedures for unknown's children parentage to acquire the family names of their foster parents.

The study has been divided into two sections, where we discuss the nature of custody for unknown's children parentage in the first section, and the family name of foster child of unknown parentage in the second section.

THE FIRST TOPIC :Nature of Custody for Unknown's children parentage

Algerian legislation regulates the provisions of custody in articles 116 to 125 of the Algerian Family Law. It also regulates the procedures in articles 492 to 497 of Law 08/09, bearing the Law on Civil and Administrative Procedures⁸, as an alternative system to adoption, which is recognized in Western laws but prohibited by Arab countries, including the Algerian legislator, based on the principles of Islamic law that prohibit adoption⁹.

FIRST REQUIREMENT: Definition of Custody for Child of Unknown Parentage

The rate of children born out of wedlock continues to increase, particularly due to the absence of religious values and the spread of social ills within society. Therefore, the only solution for these abandoned children by their biological parents may be to establish the system of custody. What is this system? Who is considered a child of unknown parentage?

Firstly: Definition of a Child of Unknown Parentage:

To understand the concept of a child of unknown parentage, it is necessary to define the notion of a child according to Algerian legislation and establish the legal meaning of being of unknown parentage.

1- Definition of a Child according to Algerian Legislation:

The Algerian legislator defines a child in Article 02 of Law 15/12 related to the child protection as follows: "A child is any person who has not reached the age of 18 years in full¹⁰." This definition aligns with the definition adopted by the United Nations Convention on the Rights of the Child, issued in 1989.

In civil¹¹ and criminal law, a child is referred to as a minor or a person subject to specific provisions, whether related to financial transactions or when committing a crime or offense against society.

Furthermore, Article 07 of the Algerian Family Law states: "The eligibility of a man and a woman for marriage is complete upon reaching the age of 19."

2- Definition of Unknown Parentage:

Parentage refers to: "the blood relationship, parentage, or the type of connection that links a person to their origins, branches, and extended family¹²". It is a significant and noble bond that God has protected through His law, safeguarding it from corruption and establishing its principles on solid foundations. The Algerian legislator does not define parentage as a term but addresses the methods of proving it in Articles 40 to 45 of the Algerian Family Law¹³.

The term "unknown's children parentage" is used as an alternative to the term "Foundling"¹⁴. It encompasses those who do not have known parentage, including children who were abandoned or discarded due to fear of shame, escaping charges of adultery, and those who lack known his family, origin or parentage¹⁵.

Moreover, poverty and family circumstances are among the main reasons for the existence of unknown's children parentage. Additionally, children may become lost or stolen, or their parentage may be unknown due to wars and natural disasters, which are general causes.

Specific reasons include the fear of shame resulting from committing a disgraceful act, as well as the inability of the mother to prove parentage, even if the child is legitimate and born out of a valid marriage contract, due to the inability to prove customary marriage¹⁶.

Secondly: Definition of a Custody Contract

Defining the concept of a custody contract requires us to define it according to the provisions of Islamic law and in accordance with the law.

1- Definition of Custody according to Islamic Law

Islamic jurisprudence considers custody as a personal commitment undertaken by the foster parent, whether male or female, as a voluntary act seeking the pleasure of the Almighty. It cannot be imposed on others. This means that custody of a child requires the mutual agreement of both spouses in Islamic law.

2- Definition of Custody according to the Law

Both Algerian Family Law and Civil Law provide for custody, considering it as a personal guarantee to ensure a specific debt and fulfil a civil obligation if the debtor fails to do so. Article 44 of Algerian Civil Law confirms this by stating: "A contract by which a person undertakes to fulfil an obligation on behalf of another person if the debtor himself fails to fulfil it."

Algerian Family Law defines custody in Article 116 as "an obligation, in the form of voluntary donation, to care for and raise a minor child, with the father assuming responsibility for the child. This is done through a legal contract." Article 117 of the same law confirms that custody can be formalized before the tribunal or a notary public, with the consent of both parents.

-Since we are discussing the custody of an unknown parentage child, it is important to note that custody takes place before the justice¹⁷. It is a formal and non-permanent contract, through which the foster parent assumes responsibility for the person and property of the minor, without the foster child having inheritance or parentage rights, although he may be eligible to receive donation or bequests¹⁸.

SECOND REQUIREMENT: Custody modality for a child of unknown parentage

To begin with, it should be noted that custody is a contract that must include the general elements required in any contract, such as consent, subject matter, and consideration, in addition to the formal element¹⁹. Furthermore, custody cannot be established unless specific conditions are met and legal procedures are followed.

Firstly: Conditions for providing custody for a child of unknown parentage

Custody is established between the foster parent and the foster child of unknown parentage and the institution granting custody for the child, in addition to the contract that reflects the mutual agreement between the parties. To establish the contract, certain conditions must be met, including conditions related to the foster parent and conditions related to the foster child.

1- Conditions related to the foster parent

Article 118 of the Algerian Family Law states: "The foster parent must be a Muslim, of sound mind, capable of managing the affairs of the foster child, and capable of taking care of him." In application of this article, the foster parent must meet the condition of being a Muslim, and it is not permissible for a non-Muslim to act as a foster parent for a Muslim child. Additionally, the foster parent must be an adult of legal age and not under any legal restriction, as well as physically and financially capable.

It is unreasonable for the foster parent to be ill or unable to perform the care duties for which

the custody is established. Moreover, financial capability can be demonstrated through employment certificates or salary statements²⁰.

- However, several other conditions are raised before the justice in the absence of a legislative provision that explicitly approves them, such as the possibility of a female foster parent or a married foster parent, and the extent of requesting custody from legal entities, in addition to the age difference between the foster parent and the foster child²¹.

2- Conditions related to the foster child:

The Algerian legislator did not explicitly stipulate special conditions related to the foster child of unknown parentage²², nevertheless, the child must be a minor, that is to say less than 19 years old, this is the only condition inferred from Article 116 of the Algerian Family Law, which states: "Custody is an obligation on the basis of donation to care for a minor child". Additionally, the legitimists have added some other conditions, including the absence of family care and the child's health safety, as well as the necessity of his registering in the civil status records²³.

Secondly: Procedures for Contracting Custody of a of Unknown's child Parentage

To carry out the custody contract, the following legal procedures must be followed:

1- Abandonment of the child by the parents:

If the mother is known, she relinquishes the child and signs a temporary abandonment agreement for a period of three months, and the child is placed under the care of the state, which oversees their needs²⁴.

The civil status officer grants the child a series of first names, and the last of these names is taken as the family name for the child, provided that the last name is one designated for males, in accordance with Article 64 of the Algerian Civil Status Law²⁵.

Throughout these procedures, the unknown parentage of a minor child remains under the custody of the Child Protection Institution, which is responsible for their care and well-being²⁶.

2-File submitting by foster family to the relevant institution to take care of the child:

This file is submitted to the Director of Social Activities in the province where he is located the child be cared for, considering that they have jurisdiction over the Child Welfare Centers in the entire province²⁷. They are received by the supervising psychologist of the service, who provides them with information about the custody system while ensuring that certain conditions are met, such as the absence of illnesses in the couple²⁸.

It is also important to verify the monthly income that ensures the family's ability to provide care²⁹, and to ensure that they are not involved in any misdemeanours or crimes of honour, etc...

If the service accepts the custody, it informs the foster in order to register it in an official record before the President of the Tribunal.

3-The judicial stage of entering into a custody contract for of unknown's child parentage:

The Algerian Family Law does not specifically address the judicial procedures for custody, which leads us to the Law of Civil and Administrative Procedures, specifically Articles 492 to 497, which contain specific procedures for it.

Article 492 of the Law of Civil and Administrative Procedures states that: "The custody request shall be submitted by the applicant to the judge of family affairs at the tribunal located in the applicant's custody place of residence."

The custody applicant must submit his request to the judge of family affairs, and the judge will rule on the request in view of a provincial order³⁰, after

conducting a full investigation into the social, financial, psychological, and mental aspects of the potential foster parent.

- The judge may order an investigation or any measure he seen necessary to ensure the foster parent's ability to care for and financially support the foster child and raise him³¹, the request is examined in the Consultation Chamber after obtaining the opinion of the representative of the public prosecutor's office³².

THE SECOND TOPIC: Family name of the unknown's child parentage

The establishment of custody entails the legal effects that apply to both the foster parent and the foster child of unknown parentage, these effects include the foster parent's obligations, such as custody over his/her own person, alimentary support, upbringing and care of the foster child, obtaining family and school allowances, custody of the foster child's money, etc³³ ...

Similarly, the custody contract entails rights enjoyed by the foster child, with the most important being the right to carry the foster parent's family name

FIRST REQUIREMENT: Procedures for the Foster Child to Obtain the Foster parent's family name

Article 29 of the Algerian Civil Law states: "Acquiring family names and changing them is governed by the law related to civil status". Referring to the Algerian Law of Civil Status, especially Article 63, it states: "The birth certificate shall indicate the day, hour, place of birth, gender of the child, first names given to the child, family names, ages, position, and residence of the father and mother, as well as for the person declaring, as applicable...."

Article 64 states: "...the same civil status officer shall give first names to a foundling and children born to unknown parents who have not been given any first names by the person declaring, the child shall be assigned a set of first names, with the last one being the family name."

However, with the issuance of Executive Decree No. 92/24 dated on January 13th, 1992³⁴, which complements Executive Decree No. 71/157 dated on June 03rd, 1971, related name changes³⁵, it became possible for the foster minor child to bear the foster parent's family name according to specific procedures.

- Refer to Executive Decree No. 20/223 dated on: August 08th, 2020³⁶, which further amends Executive Decree 71/157 relates to the change of family name and the filling of defects defined by decree no. 92/24, which has been cancelled.

Firstly: Submitting a family name change request

As a general rule, anyone who wishes to change their family name for a specific reason must submit a formal request to the Minister of Justice and Keeper of the Seals, and the request should be filed with the Public Prosecutor at the

judicial authority in the applicant's place of birth, in accordance with Article 01 of Decree 20/223.

Regarding a person who legally fosters a child of unknown parentage, he can submit, on behalf of the child and for his benefit, to the Public Prosecutor of the foster parent's residence or the child's place of birth, a request for the family name change for the child and to match his own,

The file of changing family name of the foster child is deposited to the Public Prosecutor at the jurisdictional district of the foster parent's residence or the child's place of birth, the request and accompanying documents can also be submitted electronically, as affirmed by the first Article Bis1 of Decree 20-223.

The following conditions must be met to submit this request:

A) The foster child must be of unknown parentage or have both parents unknown, changing and matching the foster child's name with the foster parent's family name is only accepted if the child is of unknown parentage or both parents are unknown.

B) If the foster child is of unknown parentage but the mother is known, the request to change and match the child's name with the foster parent's family name is only accepted with the explicit consent of the mother in an official deed³⁷, This is confirmed by the second paragraph of the first article bis of the aforementioned Executive Decree 20/223.

C) If the mother is deceased or named on the child's birth certificate without any other identifying information, the foster parent must provide a sworn statement in the form of an official notarial deed, stating under their responsibility that all efforts to contact the mother have been unsuccessful, or provide a certificate delivered from the relevant social services proving that she could not be found.

In such cases, the president judge may authorize the matching of the child's family name with that of the foster parent³⁸.

The request to change the child's family name and match it with the foster parent's family name should be accompanied by several documents, including:

- A handwritten request in Arabic to the public prosecutor at the place of residence of the foster parent or the place of birth of the child, signed by the foster parent³⁹.

- The judicial or notarial custody contract⁴⁰.

- The foster parent's birth certificate, an original copy issued from the municipality of his place of birth.

- The child's birth certificate, an original copy issued from the municipality of his place of birth.

- The foster parent's marriage certificate.

- The foster parent's residence certificate.

- An official contract, before a notary, confirming the consent of the child's mother if she is known and alive, regarding the matching of the child's family name with that of the foster parent, or her death certificate, depending on the situation.

- A Childbirth certificate obtained from the Social Activity Directorate or a certified copy thereof, for the child entrusted to the foster parent by the Child Welfare Services.

Secondly: Deciding on the request by the president of the competent tribunal

After submitting the request to match the family name of the unknown parentage child foster with that of the foster parent by the latter, with all the legal documents proving the conditions for changing the family name, it is presented to the public prosecutor at the tribunal of the foster parent's residence or the place of birth of the child foster.

"The latter is responsible for investigating the matter, including hearing witnesses, examining motives and reasons⁴¹, and submitting their request and solicitations to the presiding judge. Additionally, when necessary, he can seek the opinion of the judge of events within the same judicial authority, in accordance with Article 05 bis 02 of Decree 20/223.

The president of tribunal of birthplace of the child or the residence of the foster parent decides on in the ordinance within thirty days from the date of submission. The ordinance is then registered⁴² by the public prosecutor and referred to on the margins of the records, contracts, and extracts of the civil status contract of the foster child's birthplace. If this place is outside his jurisdiction, the competent regional public prosecutor is notified to handle it.

A copy of it is handed over to the applicant, in accordance with Article 05 bis 02 of Decree 20/223 concerning the family name changing.

Finally, it should be noted that requests for changing the family name submitted in accordance with the provisions of Article 01 bis related to the foster parent and the foster child, are not subject to publication in local newspapers in the place of the applicant's birth or place of residence if they are different⁴³. This is confirmed by the last paragraph of Article 02 of the aforementioned Decree 20/223.

SECOND REQUIREMENT: Position of the jurisprudence on granting the foster parent his family name to the foster child

The legislator's authorization for the foster parent to match his family name with the family name of the unknown's child parentage was primarily based on human considerations, this foster child, upon discovering that his family name differs from the family name of the foster family, may face a whirlwind of

psychological and health problems. In addition, it may cause tension in the relationship between him and the family that took care for him, which threatens the stability of the entire family. Therefore, the Algerian legislator has provided a solution for this foster category of unknown parentage to ensure a healthy upbringing free from psychological complex⁴⁴."

However, changing the family name of the foster child to match the foster parent's family name has raised several questions among legal Scholars and the general public regarding whether this change leads to a mingling of lineages? Whether this procedure is considered explicit or concealed adoption, and there is a division of opinions within jurisprudence:

Firstly: Opponents of the right of a foster child of unknown parentage to carry the foster parent's family name:

This group believes that the provisions of Executive Decree 20-223 lean more towards adoption, and it is a regulated or concealed adoption, by allowing the foster parent to inherit and obtain inheritance rights based on kinship, obtaining the foster parent's family name leads to a change in the true parentage of the foster child of unknown parentage⁴⁵ and associating of the child's parentage to a new person, inevitably resulting in a mingling of lineages and encroaching upon the family name of another family⁴⁶.

The general rule is that it is the civil status officer who assigns first names to this category of unknown parentage for registration in the civil status records. Alternatively, the child may be given the mother's family name if the mother's name is known to the competent authorities⁴⁷, this is in application of Article 64 of the Algerian Civil Status Law, which states: "the same civil status officer shall give first names to a foundling and children born to unknown parents who have not been given any first names by the person declaring, the child shall be assigned a set of first names, with the last one being the family name."

Departing from this rule by the Algerian legislator is unacceptable, especially as it contradicts the provisions of Article 120 of the Family Law⁴⁸, which states: "The foster child must retain their original parentage if it is known, and if the parentage is unknown, Article 64 of the Civil Status Law shall apply."

Furthermore, this decree has the potential to associate a child born out of wedlock with the foster parent, which is prohibited by Islamic law. In the case of marriage of the foster child, his children are not entitled to carry the family name of their foster parent, as the foster child is authorized to use his own family name exclusively⁴⁹.

And thus, this approach sees the necessity of reviewing Executive Decree 20/223 concerning the change of family name and the preservation of the foster child's original family name as a barrier. On the other hand, resorting to the

provisions of Islamic law that grant the child the right to have an identity and a good name is advocated. Scholars of Islamic law have exerted efforts to associate the child with his father's parentage whenever there is evidence for such association⁵⁰.

Therefore, they have expanded the means of proving parentage and narrowed the opportunities for denial. However, at the same time, Islamic religion prohibits manipulating lineages, as the Prophet Mouhamed (peace be upon him) said, "Whoever claims to belong to someone other than his biological father, knowingly, Paradise is forbidden for him."⁵¹

Secondly: Supporters of the right of a foster child of unknown parentage to obtain the foster parent's family name.

This group believes that carrying the foster parent's family name is not adoption but rather remains within the framework of custody, solely for preserving the child's dignity within society, without associating the foster parent's parentage with the foster child.

This group⁵² relies on Article 5 bis 02 of Executive Decree No. 20/223, which stipulates recording the tribunal's order to attach the foster parent's family name to the foster child of unknown parentage.

on the margins of the records, certificates, and extracts of the civil status contract of the foster child's birthplace⁵³, thus, the foster child retains his original family name with the addition of a new family name.

This right is for personal use and cannot be hidden when entering into a marriage contract, nor can it be used in inheritance matters⁵⁴.

Furthermore, the family card of the foster parent does not include the name of the foster child, as there is no mention of it, and this is due to the fact that the foster child is not registered in the foster parent's family booklet⁵⁵.

Additionally, marriage impediments are not determined based on this family name, therefore, proponents of this approach affirm that Executive Decree 20/223 is nothing more than a complementary provision to the provisions of custody⁵⁶, neither contradicting the provisions of family law nor the provisions of Islamic law, which prohibit adoption both religiously and legally.

Conclusion:

The legislator has granted the right to any individual who meets certain conditions to have custody for a child, especially if the child's parentage is unknown, where the custody is a very effective legal measure to protect this category from loss and street life, and to provide them with a stable and suitable family and environment for their upbringing, making them productive members of society.

The legislator has also granted the foster parent the right to give his family name to the foster child with the aim of providing psychological stability. This is in accordance with Executive Decree 20/223 dated August 08th, 2020.

The most important results we have reached after this humble study are as follows:

1. In the context of simplifying procedures and bringing justice closer to citizens by providing quality public services, Decree No. 71-157 dated on: June 03rd, 1971, which was amended by Executive Decree No. 20-223 dated August 08th, 2020, has been modified to facilitate the change of family name.

2. Executive Decree 20-223 has filled the legal gap that previously existed regarding the mother and modality to submit a request to change the foster child's family name to match the foster parent's family name in cases where the mother is not found.

3. The Algerian legislator has excluded the requirement of publishing a request to change the foster child's family name in daily newspapers, as a respect for the privacy and sensitivity of the situation, especially since the custody usually involves a child of unknown parentage.

4. Requests related to changing the family name of the foster child to match the foster parent's family name are now submitted to the Public Prosecutor at the foster parent's place of residence or the child's place of birth, instead of the Ministry of Justice.

5. In cases where access to the mother of the foster child is not possible, the custody request should be accompanied by a sworn statement in the form of an official deed (in the presence of a notary) under the responsibility of the foster parent, stating the inability to communicate with the mother.

6. The Algerian legislator has excluded many of the procedures followed by ordinary person who wish to change their family name and simplified them for the foster parent, such as excluding the requirement to submit objections to the family name change or seek the opinion of a specialized committee.

7- The practical reality confirms the existence of administrative complications regarding the documents of civil status and related to the foster child, such as issuing a family card for the foster parent without including the first name of the foster child. Additionally, the foster child is not registered in the foster parent's family booklet, which hinders the foster parent from benefiting from legal provisions.

In conclusion, the topic of custody has created many problems and challenges, particularly regarding the issue of granting the foster parent's family name to the foster child. Therefore, the development of legal texts related to custody and the rights of the foster child should consider the best interest of the

child, especially when the child's parentage is unknown, without conflicting with the provisions of Islamic law

***The margins**

¹Article 71 of the Algerian Constitution, issued on December 30, 2020, Official Gazette No. 82 of 2020, states that: "The rights of the child are protected by the state and the family, taking into account the best interests of the child."

²Law 84/11 dated June 9, 1984, which includes the Family Law, as amended and supplemented by Order 05/02 dated February 27, 2005, Official Gazette No. 15, 2005.

³Order 70/20 dated February 19, 1970, supplemented and amended by Law 14/08 dated August 9, 2014, including the Civil Status Law, Official Gazette No. 49, 2014.

⁴Order 70/86 dated December 15, 1970, pertaining to Nationality Law, amended by Order 05/01 dated February 27, 2005, Official Gazette No. 15, 2005.

⁵Law No. 18/11 dated July 2, 2018, related to Health, Official Gazette No. 46, 2018, as amended and supplemented by Order 20-02 dated August 30, 2020, Official Gazette No. 50, 2020.

⁶Executive Decree 12/04 dated January 4, 2012, pertaining to the Basic Model Law for Child Protection Institutions, No. 05, issued on January 29, 2012,.

⁷Law 15-12 dated July 15, 2015, related to child protection, Official Gazette No. 39, issued on July 19, 2015.

⁸Law 08/09 dated February 25, 2008, which includes the Law on Civil and Administrative Procedures, Official Gazette No. 21, 2008.

⁹Allah Almighty said: "Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion..." - Surah Al-Ahzab, Verse 5.

¹⁰Islamic law defines childhood as a time period that begins from the date of birth and ends with reaching puberty, which includes the occurrence of wet dreams for males and the onset of menstruation for females.

¹¹Order 75/58 dated June 26, 1975, which includes the Civil Code, as amended and supplemented, Official Gazette No. 78, 1975.

¹²SafiaLouennasHocine, "Unknown's children parentage: Between the Mercy of Islamic Legislation and Positive Legislation," International Conference on Mercy in Islam, Department of Islamic Studies, Faculty of Islamic Sciences, Algeria, p. 411.

¹³Please refer to Articles 40 to 45 of the Algerian Family Law.

¹⁴"Illegitimate child" among Arabs refers to the abandoned boy who is found by someone, and he is the child who is found abandoned on the roads and does not know his father or mother. For more details, refer to Abi Fadl Jamal al-Din Muhammad ibn Mukarram ibn Manzur al-Ifrqi al-Masri's book "Lisan al-Arab," Dar Al-Ma'arif, Cairo, p. 4060.

¹⁵Khaled Bouchama, "The Real Person from the Perspective of Islamic Jurisprudence," Baghdad Publishing and Distribution House, Algeria, 2009, p. 236.

¹⁶LarbiBekhti, Children's Rights in Islamic Sharia and International Conventions, Publications Office, Algeria, 2013, p. 110.

¹⁷Benchouikh, Rachid. "Explanation of Algerian Family Law," First Edition, Dar Al-Khalidonia, Algeria, 2008, p. 248.

¹⁸AllalAmal. "Adoption and Custody: A Comparative Study between Islamic Law and Positive Law," Master's Thesis in Law, University of Tlemcen, 2008/2009, p.31

¹⁹Article 117 of the Algerian Family Law states that: "Custody must be conducted before the tribunal or a notary and with the consent of the parents."

²⁰Refer to Memorandum No. 196 dated June 16, 2004, regarding the legal status of custody, Ministry of Labor and Social Security, 2004.

²¹Usually, the judge takes into consideration additional conditions in addition to the conditions stipulated by law, all in consideration of the best interests of the minor ward.

²²Article 119 of the Algerian Family Law states that: "The foster child must either be of unknown parentage or known parentage."

²³Nama, Waseela, "The Legal Status of the Illegitimate Child," Master's Thesis, Faculty of Law and Political Science, University of Mohamed Lakhder El-Wadi, 2014-2015, p. 75

²⁴Correspondence No. 1082 regarding the implementation of a new form for the temporary abandonment agreement, issued on 11-03-2001, Ministry of Labor, 2001

²⁵Refer to Article 64 of the Algerian Civil Status Law.

²⁶Djemai, Abdelrazak and SamiaSamri. "Alternative Care for Unknown's children parentage in Algerian Legislation." *Al-Ustadh Al-Bahith Journal of Legal and Political Studies*, Volume 7, April 2022, p. 730.

²⁷The state, represented by the Ministry of Solidarity, Social Affairs, and Family, is responsible for determining appropriate means to protect unknown's children parentage, ensuring their access to care, social integration, and psychological well-being. For more details, refer to: Ben Issa, Ahmed. *International and National Legal Protection for Vulnerable Children*. Academic Book Center, Amman, 2020, p. 43.

²⁸Allal, Amal. Same reference as above, p. 89

²⁹Monthly income is a necessary requirement for accepting custody. It is unreasonable for someone to foster a child if they are unable to financially support them.

³⁰Refer to Article 493 of the Algerian Law of Civil and Administrative Procedures

³¹Refer to Article 495 of the Algerian Civil and Administrative Procedures Law.

³²Refer to Article 494 of the Algerian Civil and Administrative Procedures Law

³³Refer to Article 121 of the Algerian Family Law.

³⁴Executive Decree No. 92/24 dated January 13, 1992, which complements Executive Decree No. 71/157, concerning name changes, Official Gazette No. 05, 1992.

³⁵Executive Decree No. 71/157 dated June 3, 1971, concerning name changes, Official Gazette No. [Specific number], 1971.

³⁶Executive Decree No. 20/223 dated August 8, 2020, concerning name changes, Official Gazette No. 47, year 2020.

³⁷Article 1, repeated paragraph 2 of Executive Decree 20-223, dated August 8, 2020, amending and completing Executive Decree 71/157 concerning name changes, states that: "When the mother of the child is known and alive, the request must be accompanied by her consent provided in the form of an official deed...".

³⁸Refer to Article 1, paragraph 2, reiterated, of Executive Decree No. 20-223, mentioned above.

³⁹Retrieved from the website: www.courdeblida.mjustice.dz. Date of access: January 28, 2023, at 12:00.

⁴⁰Article 117 of the Algerian Family Law states that: "Custody must be done before the tribunal or before a notary and with the consent of both parents."

⁴¹According to Article 01 of Decree 20/223, the Algerian legislator states that the public prosecutor is responsible for conducting investigations into the request for changing the family name in general. The article states that: "The public prosecutor at the judicial authority to which the request is submitted or sent to shall undertake the investigation."

⁴²Article 59 of Order 70/20, related to civil status and amended by Law 14/08 dated 09/08/2014, states that: "The text of the judgment for the types of judgments to be recorded in the civil status records must include the titles and names of the parties involved..."

⁴³The last paragraph of Article 02 of Decree 20/223 concerning changing the family name states that: "Requests for changing the family name submitted in accordance with the provisions of Article 01 repeated of this decree are not subject to the publication mentioned in this article."

⁴⁴Allal, Amal, the previous reference, page 115.

⁴⁵ Amara Messaouda, A. (2011). "The Provisions of Custody in Algerian Law in Light of Judicial Jurisprudence of the Supreme Tribunal." *Journal of Legal and Political Studies*, Volume 1, Issue 1, p. 68.

⁴⁶ Hayat, H. (2015). "The Possibility of Changing the Foster parent's Family name for the Foster child." Seminar on the Family name of Children Born out of Wedlock, University of Oran, February 2015, p. 299.

⁴⁷BelhadjArabi. (2010). "Summary Explanation of Algerian Family Law, Volume 1." Diwan University Publications, p. 426.

⁴⁸ There is a contradiction between legal texts, as an executive decree cannot contradict the provisions of ordinary laws, whether it concerns Algerian Family Law or the Algerian Civil Status Law.

⁴⁹Bouacha, A. (2004). "Custody in Family Law and Islamic Law." Dissertation, National Institute for Judiciary Training, Algeria, p. 45.

⁵⁰Louannes, Safia Hussein. (2011). "The Previous Reference." p. 431.

⁵¹ Narrated by Al-Bukhari, Number 6766. See Sahih Al-Bukhari, Volume 4, p. 2113

⁵²Houbaad Hayat, the aforementioned reference, page 299.

⁵³Zouaoui, F. (2001). "The extent of the contradiction between Executive Decree 92-24 concerning the change of family name and the principles of Islamic law." *Judicial Journal*, Issue 2, Documentation Section, Supreme Tribunal, p. 112.

⁵⁴ Article 126 of Algerian Family Law states that: "Causes of inheritance: Kinship and marriage."

⁵⁵ Leila, S. (2013). "The right of the foster child to a family name in the absence of a unified law specific to the category of children - the case of children born out of wedlock." Seminar on the Family name of Children Born out of Wedlock, University of Oran, February 2013, p. 304.

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