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N° 3356

NATIONAL ASSEMBLY

CONSTITUTION OF OCTOBER 4, 1958

TWELFTH LEGISLATURE

Registered at the Office of the President of the National Assembly on 5 October 2006.

BILL

AMENDED BY THE SENATE

on the **control** *of the* **validity** *of marriages,*

TRANSMITTED BY

THE PRIME MINISTER

at

THE PRESIDENT OF THE NATIONAL ASSEMBLY

(Referred to the Committee on Constitutional Laws, Legislation and the General Administration of the Republic.)

The Senate amended, on first reading, the bill adopted by the National Assembly on first reading, the content of which is as follows:

See the numbers:

National Assembly: **2838**, **2967** and T.A. **557**.

Senate: **275**, **492** (2005-2006) and T.A. **11** (2006-2007).

Chapter I

Provisions relating to the review of the validity of marriages

Article 1

I. – The second to fourth paragraphs of Article 63 of the Civil Code are replaced by eleven paragraphs worded as follows:

"The publication provided for in the first paragraph or, in the event of an exemption from publication granted in accordance with the provisions of Article 169, the celebration of the marriage shall be subject to:

"1° Upon delivery, for each of the future spouses, of the following information or documents:

"– a medical certificate dated less than two months attesting, to the exclusion of any other indication, that the person concerned has been examined with a view to marriage;

"– the documents required by Articles 70 or 71;

"– proof of identity by means of a document issued by a public authority;

"– the indication of the first names, surname, date and place of birth, profession and domicile of the witnesses, except where the marriage is to be celebrated by a foreign authority;

"2° At the joint hearing of the future spouses, except in the event of impossibility or if it appears, in the light of the documents provided, that such a hearing is not necessary in the light of Articles 146 and 180.

"The civil registrar, if he considers it necessary, shall request to speak separately with one or the other of the future spouses.

"The hearing of the future minor spouse shall be conducted without the presence of his or her father and mother or his or her legal representative and future spouse.

"The civil registrar may delegate to one or more permanent civil servants of the civil registry service of the municipality the conduct of the joint hearing or separate interviews. When one of the future spouses resides abroad, the civil registrar may ask the territorially competent diplomatic or consular authority to conduct a hearing.

"The diplomatic or consular authority may delegate to one or more permanent officials in charge of civil status or, where applicable, to officials in charge of a seconded chancellery or to the competent honorary consuls of French nationality to carry out the joint hearing or separate interviews. When one of the future spouses resides in a country other than that of the celebration, the diplomatic or consular authority may ask the territorially competent civil registrar to conduct a hearing. »

II *(new).* – After Article 74 of the same Code, an Article 74-1 is inserted as follows:

"*Art. 74-1*. – Before the marriage is celebrated, the future spouses confirm the identity of the witnesses declared pursuant to Article 63 or, where applicable, appoint the new witnesses chosen by them. »

Article 2

..... Compliant.....

Article 3

After Chapter II of Title V of Book I[of] the Civil Code, a Chapter II *bis is* inserted as follows:

"Chapter IIa

"On the marriage of French people abroad

"Section 1

'General provisions

"*Art. 171-1.* – A marriage contracted in a foreign country between French nationals, or between a French person and a foreigner, is valid if it has been celebrated in the forms used in the country of celebration and provided that the French person or nationals have not contravened the provisions contained in[Chapter I of] this Title.

"The same shall apply to a marriage solemnized by the French diplomatic or consular authorities, in accordance with French laws.

"However, these authorities may only proceed with the celebration of marriage between a French citizen and a foreigner in countries designated by decree.

"Section 2

"Formalities prior to marriage celebrated abroad by a foreign authority

"*Art. 171-2.* – When celebrated by a foreign authority, the marriage of a French national must be preceded by the issue of a certificate of capacity to marry drawn up after the fulfilment of the requirements laid down in Article 63 with regard to the diplomatic or consular authority competent for the place where the marriage was celebrated.

"Subject to the exemptions provided for in Article 169, the publication provided for in Article 63 shall also be made to the civil registrar or the diplomatic or consular authority of the place where the future French spouse has his or her domicile or residence.

"*Art. 171-3.* – At the request of the diplomatic or consular authority competent with regard to the place where the marriage is celebrated, the hearing of the future spouses provided for in Article 63 shall be carried out by the civil registrar of the place of residence or residence in France of the future spouse(s), or by the diplomatic or consular authority with territorial jurisdiction in the case of domicile or residence abroad.

"*Art. 171-4.* – Where there are serious indications that the proposed marriage is null and void under Articles 144, 146, 146-1, 147, 161, 162, 163, 180 or 191, the diplomatic or consular authority shall immediately refer the matter to the competent public prosecutor and inform the persons concerned.

"The public prosecutor may, within two months of the referral, inform the diplomatic or consular authority of the place where the celebration of the marriage is envisaged and the interested parties by a reasoned decision that he or she opposes the celebration.

"The withdrawal of the objection may be requested, at any time, before the regional court in accordance with the provisions of Articles 177 and 178 by the future spouses, even minors.

"Section 3

"Of the transcription of a marriage celebrated abroad by a foreign authority

"*Art. 171-5.* – To be enforceable against third parties in France, the marriage certificate of a French person celebrated by a foreign authority must be transcribed in the French civil registers. In the absence of a transcription, the marriage of a French national, validly celebrated by a foreign authority, produces its civil effects in France with regard to the spouses and children.

"The future spouses shall be informed of the rules laid down in the first paragraph when the certificate of capacity to marry is issued.

"The request for transcription shall be made to the consular or diplomatic authority competent with regard to the place where the marriage is celebrated.

"*Art. 171-6.* – When the marriage has been celebrated despite the opposition of the public prosecutor, the consular civil registrar may only transcribe the foreign marriage certificate in the French civil status registers after the spouses have submitted a decision to release the marriage from the court.

"*Art. 171-7.* – When the marriage has been celebrated in contravention of the provisions of Article 171-2, the transcription shall be preceded by the hearing of the spouses, together or separately, by the diplomatic or consular authority. However, if the latter has information establishing that the validity of the marriage is not in question

under Articles 146 and 180, it may, by reasoned decision, have the transcription carried out without a prior hearing of the spouses.

"At the request of the diplomatic or consular authority competent with regard to the place where the marriage is celebrated, the hearing shall be carried out by the civil registrar of the place of residence or residence in France of the spouses, or by the diplomatic or consular authority with territorial jurisdiction if the spouses have their domicile or residence abroad. The conduct of the hearing may be delegated to one or more permanent officials in charge of civil status or, where applicable, to officials in charge of a seconded chancellery or to the competent honorary consuls of French nationality.

"Where there are serious indications that the marriage celebrated before a foreign authority is null and void under Articles 144, 146, 146-1, 147, 161, 162, 163, 180 or 191, the diplomatic or consular authority responsible for transcribing the act shall immediately inform the Public Prosecutor's Office and suspend the transcription.

"The public prosecutor shall rule on the transcription within six months of its referral.

"If the judge has not given a decision by the end of this period or if he or she opposes the transcription, the spouses may refer the matter to the regional court for a decision on the transcription of the marriage. The court of first instance rules within a month. In the event of an appeal, the court shall rule within the same period.

"In the event that the public prosecutor requests, within the period of six months, the nullity of the marriage, he shall order that the transcription be limited to the sole purpose of referral to the judge. Until the decision of the latter, a copy of the transcribed document may only be issued to the judicial authorities or with the authorisation of the public prosecutor.

"*Art. 171-8.* – When the formalities provided for in Article 171-2 have been complied with and the marriage has been celebrated in the usual forms in the country, it shall be entered in the civil registers unless new elements based on serious evidence suggest that the marriage is null and void under Article 144, 146, 146-1, 147, 161, 162, 163, 180 or 191.

"In the latter case, the diplomatic or consular authority, after having heard the spouses, together or separately, shall immediately inform the public prosecutor's office and suspend the transcription.

"At the request of the diplomatic or consular authority competent with regard to the place where the marriage is celebrated, the hearing shall be carried out by the civil registrar of the place of residence or residence in France of the spouses, or by the diplomatic or consular authority with territorial jurisdiction if the spouses have their domicile or residence abroad. The conduct of the hearing may be delegated to one or more permanent officials in charge of civil status or, where applicable, to officials in charge of a seconded chancellery or to the competent honorary consuls of French nationality.

"The public prosecutor shall have a period of six months from the date of referral to request the nullity of the marriage. In this case, the provisions of the last paragraph of Article 171-7 shall apply.

"If the public prosecutor has not given a decision within the six-month period, the diplomatic or consular authority shall transcribe the document. The transcription does not preclude the possibility of subsequently pursuing the annulment of the marriage pursuant to Articles 180 and 184. »

Article 3 ***a (new)***

In the first sentence of the first paragraph of Article 175-2 of the Civil Code, after the words "may seize", the words "without delay" are inserted.

Article 4

Article 176 of the Civil Code is worded as follows:

"*Art. 176* – Every notice of opposition shall state the standing which gives the opponent the right to file it. It also contains the grounds for the objection, reproduces the legal text on which the objection is based, and contains the choice of address for service in the place where the marriage is to be celebrated. However, when the objection is

made pursuant to Article 171-4, the Public Prosecutor's Office shall elect an address for service at the seat of its court.

"The requirements mentioned in the first paragraph shall be provided for on pain of nullity and the prohibition of the ministerial officer who signed the act containing the opposition.

"After one year has elapsed, the notice of opposition shall cease to have effect. It may be renewed, except in the case referred to in the second paragraph of Article 173.

"However, when the objection is made by the Public Prosecutor's Office, it does not cease to have effect until a judicial decision is made."

Article 5

..... Compliant.....

Chapter II

Miscellaneous and transitional provisions

Article 6

I. – *Not amended*.....

II *(new).* – After Article 22 of Law No. 2000-321 of 12 April 2000 on the rights of citizens in their relations with the administrations, an Article 22-1 is inserted as follows:

"*Art. 22-1.* – By way of derogation from Articles 21 and 22 and subject to exceptions provided for by decree of the Council of State, when, in the event of doubt as to the authenticity or accuracy of a foreign civil status document, the administrative authority to which an application for the drawing up or issuance of a document or title is made or causes to be made, pursuant to Article 47 of the Civil Code, in the relevant checks with the competent foreign authority, silence for eight months is equivalent to a decision of rejection.

"Within the period provided for in Articles 21 and 22, the administrative authority shall inform the person concerned by any means of the initiation of these checks.

"In the event of a dispute, the judge shall form his or her opinion on the basis of the information provided by both the administrative authority and the person concerned."

III *(new).* – At the beginning of Article L. 111-6 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, the words: "Legalisation or" are deleted.

Article 7

..... Compliant.....

Article 7 *a (new)*

A decree of the Council of State shall lay down the procedures for the application of Chapter I.

Article 8

Les dispositions de la présente loi, à l'exception de l'article 6, entrent en vigueur le premier jour du quatrième mois suivant sa promulgation.

Elles ne sont pas applicables aux mariages célébrés avant leur entrée en vigueur.

Délibéré en séance publique, à Paris, le 4 octobre 2006.

Le Président,
Signé : Christian PONCELET

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