New Proposed Rules on International Jurisdiction and Foreign Judgments in Morocco

Last Thursday, November 9, Draft No. 02.23 proposing the adoption of a new Code of Civil Procedure (*al-musattara al-madaniyya*) was submitted to the Moroccan House of Representatives. One of the main innovations of this draft is the introduction, for the first time in Moroccan history, of a catalogue of rules on international jurisdiction. It also amends the existing rules on the enforcement of foreign judgments.

Despite the importance of this legislative initiative for the development of private international law in Morocco, the proposed provisions are unfortunately disappointing in many respects.

First, with regard to the rules of international jurisdiction, it is surprising that the drafters of the 2023 proposed Code have relied heavily on the rules of the Egyptian Code of Civil Procedure, which date back to the fifties of the last century. These rules are in many respects completely parochial and outdated. Other codifications from the MENA region (e.g., the Tunisian codification of PIL) or elsewhere (e.g., recent codifications of PIL in Europe and Asia) could have served as better models. Furthermore, the proposed rules seem to have overlooked developments at the regional or international level, in particular those in the European Union and the Hague Conference on Private International Law over the last two decades. The fact that the new proposed rules do not even take into account the solutions of the 1991 Ras Lanouf Convention, a double convention concluded between the Maghreb countries (but not yet ratified by Morocco), is difficult to explain.

Examples of questionable aspects of the new proposed rules include, among others:

- Adopting the nationality of the defendant as the basis for jurisdiction in all matters, including civil and commercial matters, even if the dispute has no other connection with Morocco.

- Failure to distinguish between concurrent and exclusive jurisdiction. This is problematic because the new proposed provision on the requirements for the enforcement of foreign judgments allows Moroccan courts to refuse enforcement if the judgments were rendered in matters within the exclusive jurisdiction of Moroccan courts, without providing a list of such matters.
- The adoption of questionable and outdated grounds of jurisdiction, such as the location of property without limitation and the place of the conclusion of the contract.
- Failure to introduce new rules that take into account the protection of weaker parties, especially employees and consumers.
- Failure to include a clear and coherent rule on choice of court agreements.
- Failure to include a rule on lis pendens.

Second, with regard to the enforcement of foreign judgments, the main surprise is the introduction of the reciprocity rule, which was not part of the law on foreign judgments in Morocco. Moreover, Moroccan courts have never invoked the principle of reciprocity when dealing with the enforcement of foreign judgments, either as a possible requirement or as ground for refusing to give effect to foreign judgments. It is not clear why the drafters felt the need to introduce reciprocity when there does not seem to be any particular problem with the enforcement of Moroccan judgments abroad.

The following is a loose translation of the relevant provisions. The text in brackets has been added by the author.

Part II – The Jurisdiction of the Courts

Chapter IV – International Judicial Jurisdiction

Article 72 [(General) Jurisdiction over Moroccans]
The courts of the Kingdom shall have jurisdiction to hear actions brought against Moroccans even if they are not domiciled or resident in Morocco, except when the action concerns immovables located abroad.

Article 73 [(General) Jurisdiction over Foreigners Domiciled or Resident

in Morocco]
The courts of the Kingdom shall have jurisdiction to hear actions brought against foreigners who are domiciled or resident in Morocco, except where the dispute concerns immovables located abroad.

Article 74 [(Special) Jurisdiction over Foreigners not domiciled or resident in Morocco]
[1] The courts of the Kingdom shall have jurisdiction to hear actions brought against foreigners who are not domiciled or resident in Morocco [in the following cases]:

1. **[Property and Obligations]** [if the action] concerns property located in Morocco, or an obligation formed, performed, or should have been performed in Morocco;

2. **[Tortious Liability]** [if the action] concerns tortious liability when the act giving rise to liability or the damage takes place in Morocco;

3. **[Intellectual Property]** [if the action] concerns the protection of intellectual property rights in Morocco;

4. **[Judicial Restructuring]** [if the action] concerns procedures for businesses in difficulty instituted in Morocco;

5. **[Joint Defendants]** [if the action] is brought against joint defendants, and one of them is domiciled in Morocco;

6. **[Maintenance]** [if the action] concerns a maintenance obligation and the maintenance creditor is resident in Morocco;

7. **[Filiation and Guardianship]** [if the action] concerns the filiation of a minor resident in Morocco or a matter of guardianship over a person or property;

8. **[Personal status]** [if the action] concerns other matters of personal status:

a) if the plaintiff is Moroccan;
b) if the plaintiff is a foreigner who is resident in Morocco and the defendant does not have a known domicile abroad,

9. **[Dissolution of marriage]** [if the action] concerns the dissolution of the

marital bond:
a) if the marriage contract was concluded in Morocco;
b) if the action is brought by a husband or a wife of Moroccan citizenship;
c) if one of the spouses abandons the other spouse and fixes his/her domicile abroad or has been deported from Morocco

[2] **[Counterclaims and related claims]** The courts of the Kingdom that have jurisdiction over an original action shall also have jurisdiction to hear counterclaims and any related claims.

[3] **[Conservative and Provisional measures]** The courts of the Kingdom shall also have jurisdiction to take conservative and provisional measures to be executed in the Kingdom even if they do not have jurisdiction over the original action.

Article 75
[1. **Consent and Submission]** The courts of the Kingdom shall also have jurisdiction to hear actions even where they do not otherwise fall within their jurisdiction, where the defendant expressly or implicitly accepts their jurisdiction, unless the action concerns an immovable located abroad.

[2. **Declining jurisdiction]** If the defendant in question does not appear, the court shall [in its motion] rule that it has no jurisdiction.

Part IX – Methods of Execution
Chapter III – General Provisions relating to Compulsory Execution of Judicial Judgments

Article 451 [Necessity of an Exequatur Declaration]
Foreign judgments rendered by foreign courts shall not be enforced unless they are declared enforceable following the conditions laid down in the present Act.

Article 452 [Procedure]
[1] The request for exequatur shall be submitted to the First President of the court of the second instance with subject-matter jurisdiction.
[2] Jurisdiction shall lie with the court of the place of execution, and the executor shall have the authority to pursue the execution wherever the property of the person against whom the execution was issued is found.
[3] The first president or the person replacing him/her shall summon the

defendant when necessary.

Article 453 [Requirements]
The foreign judgment shall not be declared enforceable except after verifying that the following requirements are satisfied:
[a] The foreign court did not render a judgment that falls within the exclusive jurisdiction of Moroccan courts;
[b] There exists a substantial connection between the dispute and the court of the state where the judgment was rendered;
[c] There was no fraud in choosing the rendering court;
[d] The parties to the dispute were duly summoned and properly represented;
[e] The judgment became final and conclusive following the law of the rendering court;
[f] The judgment does not contradict with a judgment already rendered by Moroccan courts;
[g] The judgment does not violate Moroccan public policy.

Article 454 [Documents and Appeal]
[1] Except otherwise stipulated in the international conventions ratified by Morocco and published in the Official Gazette, the request [for declarations of enforceability] shall be submitted by way of application accompanied by the following:
[a] an official copy of the judicial judgment
[b] a certificate of non-opposition, appeal, or cassation
[c] a full translation into Arabic of the documents referred to above and certified as authentic by a sworn translator.
[2] The judgment of granting exequatur can be subject to appeal before the Supreme Court.
[3] The Supreme Court shall decide on the appeal within one month.
[4] Judgments granting exequatur in cases relating to the dissolution of marriage shall not be subject to any appeal except by the public prosecutor.

Article 455 [Titles and Authentic Instruments]
Titles and authentic instruments established abroad before competent public officers and public servants can be enforced in Morocco after being declared enforceable, and that after showing that the title or the authentic instrument has the quality of an enforceable title and that it is enforceable following the law of the State where it was drawn up and does not violate the Moroccan public policy.

Article 456 [International Conventions and Reciprocity]

The rules laid down in the previous articles shall be applied, without prejudice to the provisions of the international conventions and treaties ratified by the Kingdom of Morocco and published in the Official Gazette. The rule of reciprocity shall also be considered.