Civil Personal Status Law in the UAE and the Paradox of the Application of Foreign Law: A Legal Trap?



I. Introduction [(*)]

[(*)] *For the sake of simplicity, reference will be made only to* Federal Decree-Law No. 41/2022 of 2 October 2022 on Civil Personal Status*. The Emirate of Abu Dhabi has enacted a separate law that addresses similar matters at the local level. For a comparison of the various applicable legal frameworks in family law in the UAE, see* Béligh Elbalti, *"The Personal Status Regimes in the UAE — What's New and What Are the Implications for Private International Law? A Brief Critical Appraisal".*

There is no doubt that the introduction of the Civil Personal Status Law (CPSL) in

the United Arab Emirates marks a significant turning point in the region's legal landscape, particularly in areas traditionally governed by religious norms. The CPSL refers to the special law adopted at the federal level, which allows family law disputes involving non-Muslims (both foreigners and UAE citizens) to be resolved under a legal framework, that is intended to be modern, flexible, based on "rules of justice and fairness" and "the best international practices from comparative legal systems" (cf. article 19 of the Cabinet Resolution Concerning the Executive Regulation of Federal Decree-Law on the Civil Personal Status). However, the incorporation of the CPSL into the existing legal frameworks in the UAE has raised several issues. These include, among others, the articulation of the CPSL with the other applicable legal frameworks, and more importantly, the extent to which parties may opt out of this "modern" regime in favor of applying their own national laws (for a general overview, see Elbalti, *op. cit.*).

The question has so far remained the subject of legal speculation, as the available court decisions have not directly or explicitly addressed the issue (available court decisions have mainly been rendered by Abu Dhabi courts. However, as mentioned earlier, in Abu Dhabi, a different legal framework applies). Optimistic views rely on the wording of the law, which – in theory – allow for the application of foreign law when invoked by foreign non-Muslims (article 1 of the CPSL). Pessimistic views (including my own) are based on the almost consistent judicial practice in the UAE regarding the application of foreign law in general, and in personal status matters in particular. From this perspective, even when foreign law is invoked, its actual application remains extremely limited due to structural and systemic obstacles that render the use of foreign law nearly impossible in practice (although, *this does not mean that foreign law is never applied*, but rather that its application is particularly difficult).

The decision discussed here is not publicly available and is presented based on private access. Although it is very likely that the Dubai Supreme Court has issued numerous rulings applying the CPSL, such judgments (unlike those in civil and commercial matters) are generally not published on the official website managed by the Dubai Courts. For reasons of privacy, the case reference and the nationality of the parties will not be disclosed.

II. Facts

The case concerns divorce between a husband (X) and a wife (Y), both of whom are non-Muslim foreigners and share the same nationality. X and Y were married more than a decade ago in their home country (State A, a European country), where they also had children, before relocating to Dubai, where they eventually settled. The parties concluded a special agreement regarding matrimonial property, in which they expressly agreed that the law of State A would apply.

Later, X initiated divorce proceedings before the Dubai Court of First Instance, seeking the dissolution of marriage in accordance with the CPSL. Y, however, contested the application of the CPSL and argued that the law of State A should apply, requesting that X's claim be dismissed on that basis. In support of her defense, Y submitted a certified and authenticated translation of the applicable law of State A.

i) Before the first instance court

The Court of First Instance, however, rejected the application of State A's law on the grounds that the submitted translation was dated, poorly legible, and that no original copy of the law had been provided. As a result, the court concluded that the conditions for applying foreign law were not met and proceeded to dissolve the marriage under the CPSL, on no-fault divorce grounds, as requested by X.

ii) Before the Court of Appeal

Dissatisfied with the judgment, Y filed an appeal before the Dubai Court of Appeal, arguing that the law of State A should have been applied instead of the CPSL, given that both parties shared the same nationality and had expressly agreed to the application of that law in their matrimonial property arrangement. She further contended, among other things, that translating the entire law would have been prohibitively expensive, and that she had not been given an opportunity to submit an original copy of the law. The Court of Appeal, however, was unpersuaded by these arguments. It reaffirmed the principle that when a foreign law is applicable, the burden lies on the party invoking its application to submit an authenticated copy of the law. Moreover, if the original text is not in Arabic, the law must be translated by a translation office certified by the Ministry of Justice. This is because, according to the Court of Appeal, foreign law is treated as a question of fact, and its content must be duly established by the party relying on it.

Unhappy with the outcome, Y appealed to the Supreme Court, reiterating the same arguments raised before the Court of Appeal.

III. The Ruling

Unsurprisingly, the Dubai Supreme Court rejected the appeal, holding as follows:

> *According to the established case law of this Court and pursuant to Article 1(1) of the CPSL, 'the provisions of this Decree-Law shall apply to non-Muslim citizens of the United Arab Emirates and to foreign non-Muslim residents in the UAE, unless one of them invokes the application of his own law […]'*
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> *It is therefore well established that the burden of proving and submitting the foreign law lies with the party seeking its application. That party must submit a complete and unabridged copy of the foreign law, including all amendments, duly authenticated and officially certified. If the foreign law is not in Arabic, it must be translated by an officially certified translator. This is because foreign law is considered a matter of fact, and it lies with the party relying on it to prove its content and that it remains in force in its country of origin.*
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> *If none of the parties invokes or submits the foreign law, or if the law is invoked but not properly submitted, or is incomplete, irrelevant to the dispute, or lacks the applicable provisions, then domestic law must be applied. This remains the case even if the foreign law is submitted for the first time on appeal, as introducing it at that stage would undermine the principle of double-degree jurisdiction and deprive the opposing party of one level of litigation, which is a fundamental rule of judicial organization and part of public order.*
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> *It is also well established that the assessment of whether the provisions of the foreign law submitted are sufficiently relevant and complete for resolving the dispute is a legal issue subject to the Supreme Court's control.*
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> *Given the above, and since the judgment of the court of first instance, as upheld by the judgment under appeal, complied with the above legal principles and ruled in accordance with the provisions of UAE [civil] personal status law, rejecting the application of [the law of State A] ……, based on sound and well-supported reasoning ….. the ground of appeal is therefore without merit.*

IV. Comments

1. Foreign Law in the UAE

As noted by UAE lawyers themselves (albeit in the context of international transactions), "it is almost impossible to apply foreign law" in the UAE, and "[i]n most cases, the courts in the UAE will apply local law and will have little or no regard for the foreign law in the absence of evidence [of its] provisions" (Essam Al Tamimi, *Practical Guide to Litigation and Arbitration in the United Arab Emirates* (Kluwer Law International, 2003) 167).

Prior to 2005, UAE courts were inconsistent in their approach to family law disputes: whereas the Dubai Court of Cassation admitted the application of foreign law *ex officio*, the Federal Supreme Court treated foreign law as a matter of fact, even in family law cases. However, following the enactment of the Federal Personal Status Law in 2005, the Dubai Court of Cassation aligned its position with that of the Federal Supreme Court, treating foreign law as fact whose application depends on the party invoking it and proving its content. This shift reflects the general legislative intent, as expressed in the Explanatory Memorandum to Federal Law No. 28 of 2005 on Personal Status.

It is therefore not surprising to read that "[t]raditionally, the UAE courts have a reputation of applying foreign law only reluctantly." This reluctance stems from the general principle that "[f]oreign law is treated as a matter of fact, and a provision of foreign law must be proven in the proceedings by the party that intends to rely on it." Consequently, "[w]here the parties do not provide sufficient evidence, the Emirati court would apply Emirati law" (Kilian Bälz, "United Arab Emirates," in D. Girsberger et al. (eds), *Choice of Law in International Commercial Contracts* (OUP, 2021) 691). For this reason, invoking foreign law has proven largely unsuccessful, as UAE courts impose very strict requirements for its acceptance. These hurdles become even more significant when the foreign law is not in Arabic. In such cases, the party relying on the foreign law must submit a certified translation of the entire relevant legal instrument (e.g., the Swiss Civil Code in its entirety), authenticated by the official authorities of the state of origin. Courts have routinely refused to apply foreign law when only selected provisions are submitted or when the original text (in its foreign

language) is not provided. Any failure to meet these stringent requirements typically results in the exclusion of the foreign law and the application of the *lex fori* instead.

It is against this background that the adoption of the CPSL should be understood. In an attempt to address the challenges associated with the application of foreign law—and rather than facilitating its application—UAE local authorities opted for a radical alternative. Under the guise of modernity, progress, and alignment with the most advanced international practices in family law, they introduced a special legal framework: the CPSL. Indeed, although the CPSL formally leaves room for the application of foreign law (article 1 of the CPSL), it is actually designed to apply *directly* to all disputes falling within its scope, even in cases where foreign law would otherwise apply under the UAE's choice-of-law rules, as set out in the Federal Law on Civil Transactions of 1985 (FLCT), arts. 10-28. (On the different approach under the Abu Dhabi Civil Marriage Law, and the issue of articulation between the choice-of-law rules provided in the 1985 FACT and article 1 of the CPSL, see Elbalti, *op. cit.*). For instance, a Filipino couple who got married in the Philippines and resides in the UAE could be granted a divorce based solely on the unilateral will of one spouse, even though divorce is not permitted under Philippine law, normally applicable here. Similarly, in countries such as Lebanon, where couples married under religious law cannot dissolve their marriage except through religious procedures, one spouse may still obtain a divorce in the UAE. This is more so knowing that jurisdictional rules in the UAE enable UAE courts to assert jurisdiction even in cases with minimal connection to the forum. (For an overview, see Béligh Elbalti, "The Abu Dhabi Civil Family Court on the Law on Civil Marriage Applicability to Foreign Muslim and the Complex Issue of International Jurisdiction").

2. Heads You Lose, Tails You Still Lose: The Litigant's Dilemma

Faced with a family law dispute in the UAE, litigants (particularly defendants) may find themselves in an inextricable situation. While, in theory, foreign law may be applied if invoked by one of the parties, in practice this is rarely the case. According to testimonies shared on various social media platforms, as well as accounts personally gathered by the author, local lawyers often advise their clients not to engage in a legal battle whose outcome appears predetermined.

However, when such advice is followed, courts typically state: "*Since neither party holds the nationality of the UAE, and neither of them invoked the application of any foreign law, the applicable law shall be the laws of the UAE.*" (see e.g. Dubai Court of First Instance, Case No. 542 of 14 February 2024 [divorce and custody case]). Yet, even when a party does invoke the application of foreign law – as in the case discussed here – the result is often the same: the foreign law is excluded, and UAE law is applied regardless, even when the party has made every effort to comply with procedural requirements.

The obligation to submit the full text of foreign law (an entire civil code!), translated into Arabic by a sworn translator and certified by the state of origin's authorities, renders the task nearly impossible (especially when the competent authorities in the State of origine often content themselves to refer the parties to available online databases and unofficial translations). This cumbersome process renders the attempt to apply foreign law a Sisyphean effort, ultimately providing the court a convenient justification to revert to the *lex fori*—when, according to the UAE's own rules of choice of law, foreign law should have been applied.

3. A Potential Recognition Problem Abroad?

What happens when divorces such as the one in the present case are submitted for recognition abroad?

There is, to be sure, no straightforward answer, as this would depend on the legal system concerned. However, precisely for such basic reasons, the UAE should exercise caution in its approach to family law disputes involving foreign parties. To return to the examples mentioned above: a divorce involving a Filipino couple or a Christian Lebanese couple is highly unlikely to be recognized in the Philippines or Lebanon. In the Philippines, foreign divorces between Filipino nationals are not recognized as valid (see Elizabeth H. Aguiling-Pangalangan, "Philippines," in A. Reyes et al. (eds.), *Choice of Law and Recognition in Asian Family Law* (Hart, 2023), pp. 273–274). Similarly, in Lebanon, civil divorce judgments rendered abroad have often been refused recognition on public policy grounds, particularly when the marriage was celebrated under religious law involving at least one Lebanese national (see Marie-Claude Najm Kobeh, "Lebanon," in J. Basedow et al. (eds.), *Encyclopedia of Private International Law*,

Vol. III (Edward Elgar, 2017), p. 2275).

Moreover, certain international treaties concluded by the UAE explicitly require a control of the law applied by the rendering court. Notably, the 1991 Franco-Emirati Bilateral Convention on Judicial Assistance and the Recognition and Enforcement of Foreign Judgments provides in Article 13(1)(b) that a foreign judgment shall be recognized and enforced only if "the law applied to the dispute is the one designated by the conflict-of-law rules accepted in the territory of the requested State." It is worth noting that the French Cour de cassation relied specifically on this provision in its refusal to enforce a divorce judgment rendered in Abu Dhabi (Ruling No. 15-14.908 of 22 June 2016; see comments by Christelle Chalas, *Revue critique*, 2017(1), p. 82).

Last but not least, in cases similar to the one discussed here, where a party relying on foreign law appears to be effectively prevented from making her case due to the excessively stringent evidentiary requirements imposed by UAE courts, such proceedings may be found incompatible with procedural public policy. This is particularly true where the losing party was not afforded a fair opportunity to present her arguments, raising serious concerns regarding due process and access to justice.

4. Epilogue

Since the emergence of private international law as a legal discipline, debates over the justification for applying foreign law have occupied scholars. Regardless of the theoretical foundations advanced, it is now widely accepted that, the application of foreign law constitutes "a requirement of justice" (O. Kahn-Freund, "General Problems of Private International Law," 143 *Collected Courses* (1974), p. 469).

Therefore, while the stated objective of the CPSL is to provide expatriates with a modern and flexible family law based on principles that are in line with the best international practices may be understandable and even commendable, UAE authorities should not lose sight of the fact that the application of foreign law is "an object directed by considerations of justice, convenience, [and] the necessity of international intercourse between individuals" (International Court of Justice, Judgment of 28 November 1958, *ICJ Reports* 1958, p. 94).