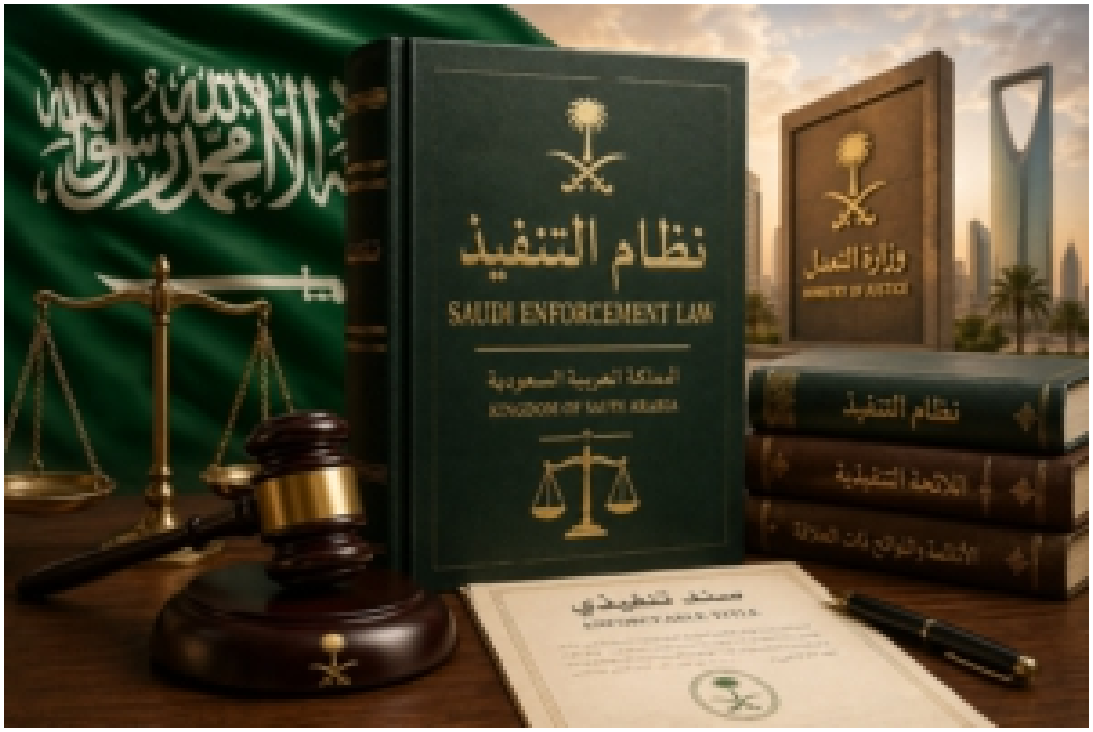
New Rules on the Enforcement of Foreign Judgments in Saudi Arabia – Some Preliminary Observations



Many thanks to Karim El Chazli (Consulting and Testifying Expert on Arab Laws) for the tip-off

I. Introduction

The field of foreign judgments in the MENA region has witnessed additional legal developments. After Morocco, which adopted in February a new Code of Civil Procedure containing an updated regime for the enforcement of foreign judgments (see my previous on this blog), Saudi Arabia followed suit by adopting a new Execution Law (*Nizam at-Tanfidh*), approved by the Council of Ministers on 15 April 2026 (27–28 Shawwal 1447 H), which contains rules on the enforcement of foreign judgments. The new law replaces the existing Execution Law promulgated by Royal Decree No. M/53 of 3 July 2012 (13 Sha'baan1433 H).

The Execution Law governs, *inter alia*, the execution of "titles of obligation" (*sanadat tanfidhiyya* (pl.), *sanad tanfidhi* (sing.); lit. "enforceable titles") in general, as defined by the Law. These include, among others, foreign judgments, foreign arbitral awards, and foreign authentic instruments declared enforceable in accordance with the rules set out in the Law. The new Execution Law (new Article 7) adds to the existing list (former Article 9) mediated settlement agreements concluded abroad. This addition appears to be linked to the fact that Saudi Arabia is a State Party to the 2018 Singapore Convention, which was ratified on 5 May 2020 and entered into force on 5 November of the same year.

II. Enforcement Requirements

With respect to the regime applicable to the enforcement of foreign judgments, the new conditions are now laid down in new article 9 of the new Law.

New Article 9(1) of the 2026 Execution Law reads as follows (loose tentative translation):

> *1. Without prejudice to the obligations of the Kingdom under international treaties and agreements, the court [the Execution Court] shall not declare enforceable a foreign judgment or order except on the basis of reciprocity and after examining that the following conditions are met:*
>
> *a) The dispute in which the foreign judgment or order was rendered does not fall within the exclusive jurisdiction of the courts of the Kingdom.*
>
> *b) There is no similar case pending in the Kingdom that was filed before the case in which the foreign judgment or order was rendered.*
>
> *c) The parties to the proceedings in which the foreign judgment was rendered were duly summoned, properly represented, and given the opportunity to defend themselves.*
>
> *d) The foreign judgment or order has become final, in accordance with the law governing the competent judicial authority that rendered it.*
>
> *e) The foreign judgment or order does not conflict with a prior judgment or order—on the same subject matter—rendered by a competent judicial authority*

in the Kingdom.

f) The foreign judgment or order does not violate the public policy of the Kingdom.

Paragraph 2 deals with the enforcement of foreign arbitral awards and foreign mediated settlement agreements, while paragraph 3 deals with the enforcement of foreign authentic instruments.

III. Observations

If we compare the new enforcement requirements with those set out in the 2012 Execution Law, we can see that most of them have been reproduced without any significant modification, although in some cases slightly different wording has been used. This is particularly true of the requirements listed in items (c) [service and the right of defence], (d) [finality], (e) [conflicting judgments], and (f) [public policy], as well as of the proviso, which contains a reference to the reciprocity requirement.

At the same time, some significant differences can be observed, particularly with respect to the rules on indirect jurisdiction (1) and the existence of a pending case before Saudi courts (2). Further important clarifications relate to two other fundamental issues: the prohibition of *révision au fond* (3) and the limitation period for enforcing titles of obligation (4).

1. Indirect Jurisdiction

First, the most notable change concerns the control of the indirect jurisdiction of the rendering court. Indeed, under the 2012 Execution Law, the jurisdiction of the foreign rendering court was subject to a double control: first, by verifying that the dispute did not fall within the jurisdiction of Saudi courts (in general, and without any specific limitation); and second, by checking that the rendering court had jurisdiction in accordance with its own rules of international jurisdiction.

The new Execution Law significantly modifies the scope of the jurisdictional

requirement and limits it to cases over which Saudi courts have exclusive jurisdiction. In doing so, the Saudi legislator joins other countries in the region that have adopted similar approaches, notably Tunisia (see Béligh Elbalti, "The Jurisdiction of Foreign Courts and the Enforcement of their Judgments in Tunisia: A Need for Reconsideration", 8(2) *Journal of Private International Law* (2012) 195, and recently Morocco (see Béligh Elbalti, "The New Moroccan Framework on International Jurisdiction and Foreign Judgment Enforcement – A Preliminary Critical Assessment", on this blog. For a comparative overview on the various approaches adopted in the MENA region, see Béligh Elbalti, "The recognition of foreign judgments as a tool of economic integration: Views from Middle Eastern and Arab Gulf countries", *in* P. Sooksripaisarnkit and S. R. Garimella (eds.), *China's One Belt One Road Initiative and Private International Law* (Routledge, 2018) 226; *idem*, "Perspective from the Arab World", *in* M. Weller et al. (eds.), *The 2019 HCCH Judgments Convention – Cornerstones, Prospects, Outlook* (Hart, 2023) 187).

The problem with the new rule, however, is that Saudi law on international jurisdiction does not contain clear rules on what constitutes "exclusive jurisdiction." The relevant provisions on international jurisdiction contained in the Law of Procedure before Sharia Courts (*Nizam al-Murafa'at al-Shar'iyya*, Royal Decree No. M/1 of 24 November 2013 (22 Muharram 1435H), Articles 24 to 30) do not define or clearly identify which heads of jurisdiction are exclusive. As a result, the scope of the requirement may remain uncertain in practice, which could lead to a restrictive or inconsistent approach in the recognition and enforcement of foreign judgments.

2. Pending case before Saudi Courts

Item (b) of Article 9 of the new Law is an addition that has no equivalent in Article 11 of the 2012 Execution Law. While this requirement is generally found in the international conventions applicable in the region (notably the 1983 Riyadh Convention and the 1995 GCC Convention), it has almost no equivalent in the domestic legislation of Arab countries (with the notable exception of Lebanon. See Elbalti, "Perspective from the Arab World", *op. cit.*, 192). It should be noted, however, that Article 9(b) requires that the action previously brought before Saudi courts and still pending be "similar (*mumathila*)" to the one in which the

foreign judgment was rendered. While the terminology used is somewhat vague, this suggests that both actions should involve the same subject matter (as is more clearly required in Article 9(e) concerning conflicting judgments). It is, however, unclear whether this requirement also extends to the identity of the parties.

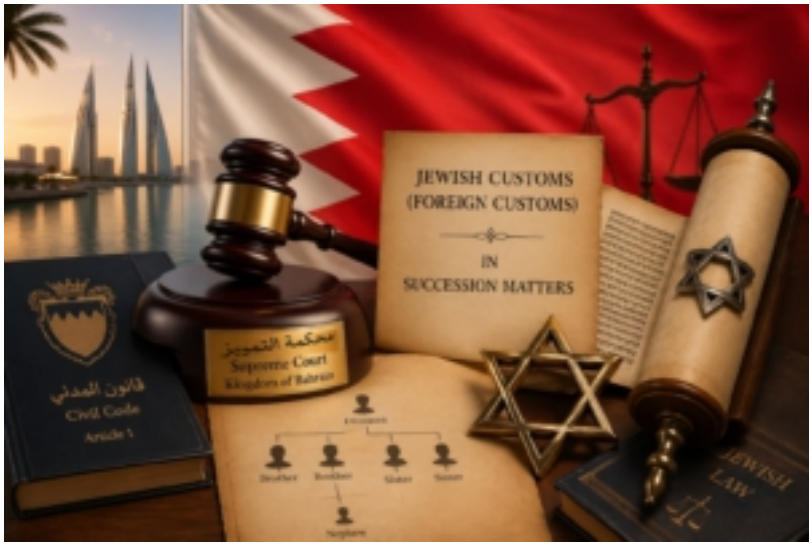
3. Explicit prohibition to review the merits of foreign judgments

Under the 2012 Execution Law, there is no explicit provision prohibiting a review of the merits of foreign judgments. Nevertheless, such a prohibition may be inferred from the imposition of a number of formal and procedural requirements for having foreign judgments declared enforceable. In judicial practice, the principle of the prohibition of *révision au fond* is frequently affirmed; however, some decisions suggest that it has not always been strictly observed (see Elbalti, "Perspective from the Arab World", *op. cit.*, 185). The new Law has addressed this issue expressly in Article 4(2), which provides that "Subject to the provisions of Article (9) of the Law, the court shall ensure that the title of obligation satisfies its statutory requirements, without examining the merits of the right forming its subject matter".

4. Limitation period to execution of the titles of obligations

The new Enforcement Law clarifies the limitation period applicable to the execution of titles of obligation. Under new Article 11, execution lapses upon the expiry of ten (10) years from the date on which the title becomes due and enforceable. Although this rule also applies to foreign judgments as titles of obligation (Article 7 of the new Law), the wording of the provision suggests that it concerns foreign judgments only once they have been declared enforceable by the Execution Court. The Law, however, contains no specific limitation period governing the filing of an application for a foreign judgment to be declared enforceable in Saudi Arabia. This suggests that, in principle, judgment creditors may apply at any time for such a declaration. By contrast, once enforceability has been granted, actual execution will be barred upon the expiry of the ten-year limitation period.

Bahraini Supreme Court Accepts the Applicability of “Foreign” Jewish Customs in a Succession Case Involving Bahraini Jews



I. Introduction

This is certainly a genuinely interesting case from Bahrain, involving the application of “foreign” Jewish customs in a succession dispute that appears to be between Jewish Bahraini nationals. Although the case seems to lack any foreign element, its relevance to conflict of laws is nonetheless clear, since – to my knowledge – this is the first case in which the applicability of “foreign” religious customs in matters of personal status has been explicitly admitted in what appears a purely domestic case. The case also provides a broader analytical framework, raising questions about the place and applicability of non-state law in private international law (this contrasts of the recent decision of the French Supreme Court denying the applicability of Jewish law, albeit in a different context) and, more generally, about the compatibility of non-Islamic religious norms with domestic public policy frameworks in Muslim-majority legal systems.

II. Facts

The case concerns a domestic succession dispute involving Jews in Bahrain. Although the ruling does not expressly state this, the absence of any reference to choice-of-law rules strongly suggests that the parties involved were Bahraini Jews and that the case contained no foreign elements.
Following their brother's death, Y1 (the deceased's brother) brought proceedings in 2024 before the High Civil Court against Y2 (the deceased's nephew) and Y3 (the deceased's sister), seeking the opening of the estate, the identification of the heirs, an inventory of the assets, and the devolution of the estate. The court ordered the opening of the estate and held that Y1 and Y2 were entitled to equal shares.

X et al. (the deceased's sisters), who were not parties to the original proceedings, filed a third-party objection seeking annulment of the judgment and a redistribution of the estate among all heirs, including themselves, in equal shares, based on Jewish inheritance customs or, subsidiarily, Islamic law. The objection was dismissed on the merits, and this outcome was upheld on appeal. X et al. then appealed to the Supreme Court of Bahrain, challenging their exclusion from the inheritance.

Before the Supreme Court, X et al. argued that the lower courts had relied on Chapter 27 of the Torah (the Old Testament), a text which, they contended, no longer reflects contemporary Jewish social or religious practice. They maintained that Jewish inheritance rules have evolved over time and that current customs within Jewish communities grant women equal inheritance rights in the absence of a will, an approach adopted by many rabbinical courts worldwide. In the absence of established Jewish inheritance rules or locally recognised custom in Bahrain, they argued that prevailing foreign custom should apply, since it does not conflict with Bahraini public policy.

III. Ruling

In its decision of 1 December 2025, the Supreme Court ruled in favor of X et al. holding as follows (detailed summary):

> *Under Bahraini law, the High Civil Courts have jurisdiction over all personal*

status matters concerning non-Muslims. Where no statutory rule applies, Article 1 of the Civil Code requires courts to apply the customs of the religious community concerned.

Such customs are not limited to those established locally in Bahrain. If no local custom is proven, courts may apply general or foreign customs, provided that they are genuinely observed by the members of the religion concerned. The application of foreign custom is subject to two conditions: first, that it is actually and consistently followed and regarded as binding within the community, that is, it has not fallen into disuse; and second, that it does not conflict with public policy in Bahrain. Where these conditions are met, the relevant foreign custom governs matters of personal status concerning members of the religion in question.

In this case, the lower court applied Chapter 27 of the Torah on the ground that no local Jewish custom governing the distribution of inheritance existed in Bahrain, thereby excluding any consideration of customs prevailing outside the Kingdom. However, once its existence is established, foreign custom may be disregarded only where it conflicts with a statutory provision or with public policy. The failure to examine whether relevant foreign Jewish inheritance customs existed and satisfied the required conditions—namely, that they are applied in a consistent, continuous, and well-known manner among members of the Jewish faith, that they are regarded by them as binding, and that they do not violate public policy—justifies the quashing of the decision and the remittal of the case.

III. Comments

Generally speaking, the application of foreign law in the MENA region has long been a challenging issue question marked by uncertainty and resistance in practice (for a general comparative overview, with a special focus on civil and commercial matters, see Béligh Elbalti, "Choice of Law in International Contract and Foreign Law before MENA Arab Courts from the Perspective of Belt and Road Initiative", *in* Poomintr Sooksripaisarnkit, Sai Ramani Garimella (eds.), *Legal Challenges of China's One Belt One Road Initiative – Private International Law Considerations* (Routledge, 2025), pp. 145-150). Against this background, the

acceptance by the Bahraini Supreme Court of the application of foreign customs in matters of personal status in a purely domestic case is all the more noteworthy, insofar as certain conditions are met.

The case raises in particular two fundamental questions: (1) the applicability of non-Muslim legal norms in Bahrain; and (2) the relevance of public policy in this context.

1. The applicability of non-Muslim legal norms in Bahrain

a) General Applicable framework

Unlike some non-neighboring countries in the region, where matters of personal status of non-Muslims—whether foreigners or nationals—may be governed by special legislation (see, for example, UAE federal legislation on Civil Personal Status), Bahrain has not adopted any specific legal framework applicable to non-Muslims.

There are, however, a few notable exceptions.

First, the 1971 Code of Civil and Commercial Procedure (CCCP) sets out conflict-of-laws rules that are expressly applicable to personal status matters involving non-Muslims (Article 21 of the Bahraini CCCP).

Second, Legislative Decree No. 11 of 1971 regulates inheritance and the devolution of estates of foreign non-Muslims.

Third, Legislative Decree No. 42 of 2002 on Judicial Jurisdiction provides, in Article 6, that disputes relating to the personal status of non-Muslims fall within the jurisdiction of the civil courts, as opposed to the Muslim Sharia courts, which, by contrast, have subject-matter jurisdiction over all disputes relating to the personal status of Muslims, with the exception of certain disputes relating to succession, which fall within the jurisdiction of the civil courts (Article 13). In this context, the Muslim Sharia courts are required to apply Bahrain's Family Law of 2017 (Law No. 17 of 2017), which to date constitutes the only legislative framework governing family law matters in Bahrain. This law, however, applies exclusively before the Muslim Sharia courts, which lack jurisdiction over disputes involving non-Muslims.

Accordingly, while the civil courts have jurisdiction *ratione materiae* to hear personal status disputes involving non-Muslims, Bahraini law does not specify the substantive law to be applied by those courts in such matters—except where the parties are foreigners and foreign law is applicable pursuant to Bahraini choice-of-law rules, or where the dispute concerns the succession of foreign non-Muslims, in which case Legislative Decree No. 11 of 1971 applies.

b) Customs as a source of law

It is in this context that the Bahraini Supreme Court relied on Article 1 of the Bahraini Civil Code of 2001, which authorizes courts to apply customs (*'urf*) in the absence of legislative provisions. The reference to customs is significant, given that Bahraini family law does not contain any provision allowing non-Muslims to invoke the application of their own religious law, unlike several neighbouring jurisdictions in the region (see Article 1(2) of the UAE Personal Status Law of 2024; Article 364 of the Kuwaiti Personal Status Law of 2007; Article 4 of the Qatari Family Law of 2006; and Article 282 of the Omani Personal Status Law of 1997).

The Bahraini Supreme Court's case law is consistent on this point. In a previous decision of 4 April 2023, the Supreme Court quashed a lower court judgment that had applied the 2017 Bahraini Family Law to a dispute involving spouses of the Bahá'í faith, without examining whether there existed any laws or regulations among members of the Bahá'í faith in Bahrain governing their personal status matters, or whether any customs regulated such matters. Unlike the case discussed here, the 2023 decision did involve a conflict-of-laws issue in the sense of private international law, which was resolved by applying Bahraini law as the *lex patriae* of the husband (Article 21(3) of the CCCP). It was at then that the Supreme Court emphasized the absence of Bahraini legislation governing personal status matters for non-Muslims and justified recourse to Article 1 of the Civil Code, thereby overruling the lower court's decision for failing to consider the applicability of Bahá'í law or custom.

However, what is remarkable in the present case is that the court extended the scope of the "customs" referred to in Article 1 of the Civil Code to include "general and foreign (external) customs", in the absence of a local one (*'urf*

mahalli). Reference to foreign (external) customs is, however, subject to two cumulative conditions: (1) the foreign customs must be generally observed by members of the relevant religious community, in the sense that they must not have fallen into disuse; and (2) they must not be inconsistent with public policy in Bahrain. With respect to the first condition, the appellants argued that the classical Jewish rule prioritizing male heirs and allowing women to inherit only in the absence of sons has become obsolete in contemporary Jewish social and religious communities. They contended that it has become common practice across Jewish communities worldwide to allow women to inherit on an equal basis, a practice consistently endorsed by rabbinic courts in various legal systems worldwide.

2. Consistency with public policy

Another key question concerns whether succession rules that depart from Islamic Sharia should be regarded as contrary to public policy. Given the centrality of Islamic Sharia in the legal systems of many MENA countries, succession rules raise a particularly sensitive issue when they diverge from its principles. This is more so, knowing that, in some jurisdictions, such as Egypt, where non-Muslims are permitted to apply their own religious rules in matters of family law, succession remains governed by a unified regime based on Islamic Sharia, which applies equally to Muslims and non-Muslims.

In the present case before the Bahraini courts, the applicable Islamic Sharia rules would have entitled the deceased's sisters to inherit, but only on the basis of the principle that a male heir receives a share equal to that of two female heirs (Quran 4:176). In addition, remote male agnates, such as nephews, will be excluded. It is therefore understandable that X et al. invoked Islamic Sharia in the alternative, since, unlike the classical Jewish rule at issue, it would at least secure them a share in the estate, albeit an unequal one (on the reliance of Jewish community on Islamic Sharia courts, see Jessica M. Marglin, "Jews in Shari'a Courts: A Family Dispute From the Cairo Geniza", *in* A. E. Franklin et al. (eds.), *Jews, Christians and Muslims in Medieval and Early Modern Times – A Festschrift in Honor of Mark Cohen* (Brill, 2014), pp. 207-25).

The central issue, however, is whether an equal division of the estate among all

potential heirs, without gender distinction, would raise concerns of Islamic public policy. On this point, comparative practice in the region shows a consistent reluctance to treat divergence from Islamic Sharia rules as such a violation. Courts across the Middle East have generally held that, in disputes involving non-Muslims, the application of foreign or religious rules differing from Islamic inheritance principles does not, in itself, offend public policy (for a detailed analysis from a private international law perspective, see Béligh Elbalti, "Applicable Law in Succession Matters in the MENA Arab Jurisdictions – Special Focus on Interfaith Successions and Difference of Religion as Impediment to Inheritance", *RabelsZ*, Vol. 88(4), 2024, pp. 734). Against this background, it is unlikely that the Bahraini courts would consider an equal distribution of the estate among heirs to be contrary to public policy, particularly where the applicable framework already permits recourse to religious or customary norms in the absence of specific legislation.

Advocate General Emiliou's Opinion on Case C-799/24: Res Judicata Effect Applies Despite Breach of Art 31(2) Brussels Ia

by Arvid Kerschnitzki, University of Augsburg

On 23 April 2026, Advocate General *Emiliou* published his opinion on Case C-799/24 – *Babcock Montajes S.A. v Kanadevia Inova Steinmüller GmbH*. It adds another piece to the puzzle that is the CJEU's broad interpretation of the term 'judgment' in the Brussels Ia Regulation. At the same time, the case highlights the persisting problems with procedural coordination under the regulation.

I. Facts of the case

The facts of the case as well as the procedural history have already been summarised in detail by *Lino Bernard* and *Marta Requejo Isidro* respectively, here and here.

To summarize:

A German and a Spanish company concluded a contract with an exclusive choice-of-court agreement in favour of a German court. Despite this agreement, the Spanish company initiated proceedings before a Spanish court in Madrid, seeking payment allegedly owed under the contract in connection with a bank guarantee invoked by the German company. Shortly thereafter, the German company brought proceedings before the designated German court in Cologne, seeking a declaration that the Spanish company was under an obligation to reimburse the German company and/or to pay damages.

The Madrid court affirmed its international jurisdiction without addressing the choice-of-court agreement, but declined territorial competence and referred the case to the court in San Sebastián (Spain). Although the German company did not challenge the Madrid court's decision, it subsequently contested the international jurisdiction before the San Sebastián court. This objection was rejected in an interim decision, with the court relying on the prior determination of the Madrid court.

In parallel, the German court seized by the German company dismissed the action as inadmissible, holding that it was bound, pursuant to Art. 36(1) of the Brussels Ia Regulation, to recognise the decision of the San Sebastián court, even though the choice-of-court agreement had been disregarded. On appeal, however, the German appellate court overturned this decision, finding that it retained international jurisdiction despite the Spanish court's ruling. This was due to the appellate court's assertion that the interim decision did not constitute a 'judgment' within the meaning of the Brussels Ia Regulation. The Spanish company appealed to the German Federal Court of Justice, which referred the following questions to the Court of Justice of the European Union:

1. Is the term 'judgment' in Article 36(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and

commercial matters ('the Brussels I Regulation') to be interpreted to the effect that the court of a Member State on which an agreement as referred to in Article 25 of the Brussels I Regulation confers exclusive jurisdiction (Article 31(2) of the Brussels I Regulation) must recognise a judgment by which a non-designated court of a Member State finds that the courts of that Member State have international jurisdiction if the judgment in question is an interim judgment, in other words, is not a decision which terminates a dispute?

2. If the answer to Question 1 is, in principle, in the affirmative: Does recognition of the interim judgment also depend on whether the interim judgment affirming the international jurisdiction of the courts of the Member State is binding on the non-designated court itself and/or whether the affirmation of international jurisdiction may be varied in the context of an appeal?

II. Opinion of Advocate General Emiliou

AG *Emiliou* addressed the questions jointly, understanding them as asking 'whether an interim decision adopted by a court of a Member State, in which that court (only) declares itself to have international jurisdiction, but which does not yet make any determination on the merits of the claim, is covered by the concept of "judgment" within the meaning of Art. 36(1) of Regulation No 1215/2012 and must therefore be recognised in accordance with that provision, even if that decision allegedly contradicts an exclusive choice-of-court agreement designating the courts of another Member State.' (para 27).

He begins by emphasising that an infringement of a choice-of-court agreement cannot justify refusal of recognition (paras 38–56). This is based on the prohibition of a *révision au fond* (para 39), as also confirmed by the *Gjensidige* judgement (C?90/22) (para 42).

Turning to the central issue – whether an interim decision by which a court of a Member State declares itself to have jurisdiction, allegedly in breach of a choice-of-court agreement, constitutes a 'judgment' within the meaning of Art. 2(a) of the Brussels Ia Regulation – AG *Emiliou* relies on the Court's case law, in particular *Maersk* (Joined Cases C-345/22 to C-347/22) and *Gothaer* (C-456/11), to show that procedural decisions are not excluded from the concept of a 'judgment' (para 67–73). While acknowledging that these cases do not directly address the present

issue (para 69), he argues that there is no convincing reason to distinguish between a decision declining jurisdiction (as in *Gothaer*) and one confirming jurisdiction (as in the present case) (para 79).

The AG then highlights the importance of the concept of 'judgment' in the context of *lis pendens* (para 74). He notes that the proper functioning of the obligation to decline jurisdiction under Art. 29(3) would be uncertain if a purely jurisdictional decision were not regarded as a 'judgment' capable of recognition (para 76).

AG *Emiliou* emphasises that, although safeguarding the practical effectiveness of choice-of-court agreements is a legitimate concern, the protection afforded by Art. 31(2) does not justify excluding decisions containing only jurisdictional findings from the concept of a 'judgment' within the meaning of the Regulation (paras 86–88). Refusing recognition of such an interim decision would effectively permit parallel proceedings and thereby create a risk of conflicting judgments – undermining the very objectives of the *lis pendens* rules (para 89). In such circumstances, Art. 29(3) should take precedence over Art. 31(2) once it becomes clear that parallel proceedings cannot be avoided through the mechanisms of Art. 31(2) (para 90).

Finally, AG *Emiliou* argues that the obligation to decline jurisdiction under Art. 29(3) may arise at different stages of the proceedings, depending on whether the defendant is still able to contest jurisdiction. The court second seised should only decline jurisdiction once it can be safely assumed that the court first seised will proceed to examine the case on the merits (para 96). Referring to the wording of Art. 38(a), he concludes that the obligation to recognise a judgment containing only a jurisdictional determination may arise irrespective of whether that judgment is final. By contrast, the obligation to decline jurisdiction under Art. 29(3) arises only once the jurisdiction of the court first seised has been established in such a way that it can no longer be contested (para 98).

In response to the second question referred, *Emiliou* further suggests that a jurisdictional determination may produce *res judicata* effects which cannot subsequently be set aside by the courts with priority (paras 99–101).

To summarise the Opinion of AG *Emiliou*: an interim decision, even if given in breach of a choice-of-court agreement, constitutes a 'judgment' within the meaning of Art. 2(a) of the Regulation and must be recognised. While the

obligation of recognition arises irrespective of whether the decision is final, the obligation of the court designated in the choice-of-court agreement to decline jurisdiction under Art. 29(3) arises only once the jurisdiction of the court first seised can no longer be contested in the ongoing proceedings.

III. Comment

The present proceedings will likely make a further contribution to the CJEU's emerging, controversial line of case law on what constitutes a 'judgment' capable of recognition within the meaning of Art. 36 of the Brussels Ia Regulation. Prominent examples include *H Limited* (C-568/20), *London Steam-Ship* (C-700/20) and *Gothaer* (C-456/11), all of which are referenced in the Opinion (Fn. 32, 34, 39).

To date, the Court has consistently adopted a broad interpretation of this concept, notwithstanding substantial criticism from scholars. The Opinion of AG *Emiliou* continues this approach by interpreting 'judgment' within the meaning of the Regulation as encompassing interim decisions, even where they are given in breach of Art. 31(2).

Even though (German) scholarship remains cautious with regard to the recognition of such decisions, the reasoning of AG *Emiliou* is largely convincing, albeit with some caveats.

The main reservation concerns his argument that the obligation to decline jurisdiction under Art. 29(3) needs to be reinforced by treating jurisdictional decisions as recognisable judgments (paras 76–78). This step does not appear necessary. As he himself acknowledges (para 78), the same line of reasoning could lead to the opposite conclusion, namely that Art. 29(3) already provides a sufficient mechanism, making the recognition of an interim judgment in such circumstances superfluous.

However, the Opinion remains firmly in line with the Court's existing case law, with the judgment in *Gothaer* (see especially Nr. 79). It is convincing in emphasising that, while the Regulation seeks to protect choice-of-court agreements, the prevention of parallel proceedings – and thus of conflicting judgments – carries greater weight (paras 89–90). This is further underpinned by the emphasis on mutual trust and the free circulation of judgments (paras 38–40, 82, 85, 87).

It is, however, somewhat surprising that AG *Emiliou* initially relies on Art. 29(3) as a key argument in favour of recognising the interim judgment, yet ultimately maintains a substantive distinction between the obligation to recognise such a judgment under Art. 36(1) and the obligation to decline jurisdiction under Art. 29(3). In the present case, this distinction does not appear to affect the outcome. It remains to be seen in which situations it might lead to different results.

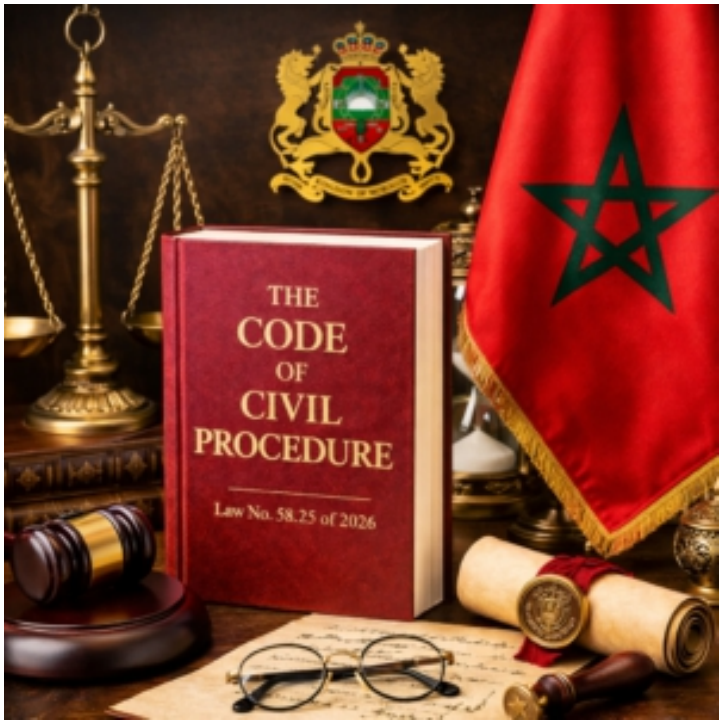
Ultimately, however, the case reveals a more fundamental issue. As Lino Bernard has aptly observed, it is, in essence, concerned with procedural coordination under the Brussels Ia Regulation. Since a violation of the *lis pendens* rules does not constitute a ground for refusal of recognition (*Liberato* – C-386/17; see also AG *Emiliou*'s Opinion, Nr. 53), the question whether an interim decision is capable of recognition becomes particularly significant in this context. By contrast, if the *lis pendens* rules were enforced at the level of Art. 45(1), the issue of recognisability would be far less consequential, as recognition could be refused on that basis.

In this regard, it is remarkable that AG *Emiliou*'s decision *prima facie* strengthens (see para 76) the *lis pendens* rules at the stage of recognition. It may provide a workable interim solution for the principle of priority under Art. 29(1) and (3). But at the same time, as the present case illustrates, it sacrifices the protection of choice-of-court agreements under Art. 31(2). This could conceivably create new opportunities to misuse the *lis pendens* rules and encourage a *race to the courts*, particularly for claimants with the ability to convince the court to issue an early interim decision.

Accordingly, the case once again highlights the need to elevate the entire *lis pendens* regime to a ground for refusal of recognition. Encouragingly, the Commission's Report on the application of the Brussels Ia Regulation suggests that the recast may address this issue.

Independent of any reform of the Regulation, it remains to be seen whether the Court will follow AG *Emiliou*'s broad understanding of 'judgment' and continue its line of extending the interpretation of that concept within the meaning of the Regulation.

The New Moroccan Framework on International Jurisdiction and Foreign Judgment Enforcement – A Preliminary Critical Assessment



I. Introduction

Finally out: the new Moroccan Code of Civil Procedure (Law No. 58.25), the preparation of which was previously announced on this blog, has been promulgated by *Dahir* (Royal Decree) No. 1.26.07 of 11 February 2026 and published in the Official Journal (*Al-Jarida Ar-Rasmiyya*) No. 7485 of 23 February 2026. The legislative process was fraught with difficulties, and the draft went back and forth several times before its final adoption earlier this year. The Code will enter into force six months after its publication, i.e. on 24 August 2026.

As previously introduced on this blog, the preparatory work for the new Code dates back to 2023, when a first draft was submitted to the Moroccan House of Representatives (Draft No. 02.23). One of the main innovations of the new Code is the introduction, *for the first time in Moroccan history*, of a catalogue of rules on international jurisdiction. The Code also amends the existing rules governing the recognition and enforcement of foreign judgments. Apart from a few minor exceptions, the provisions contained in the new Code, both on international jurisdiction and on the recognition and enforcement of foreign judgments, remain largely unchanged compared with those previously presented, save for limited linguistic and stylistic adjustments that do not entail any substantive legal implications.

What follows is a brief outline of the main solutions adopted in the Code, followed by a short assessment.

II. International Judicial Jurisdiction

The rules governing international jurisdiction are now expressly set out in Articles 72 to 75 of the new Code, contained in Chapter IV, entitled *"International Judicial Jurisdiction"* (*al-Ikhtisas al-Qada'i ad-Duwali*). The new rules may be summarized as follows:

1. General jurisdiction based on the defendant's Moroccan nationality and the domicile or residence of a foreign defendant in Morocco (Articles 72 and 73)

Article 72 confers general jurisdiction on Moroccan courts on the basis of the Moroccan nationality of the defendant, even where the latter has neither domicile nor residence in Morocco. Article 73, by contrast, adopts the classical principle of *actor sequitur forum rei* when proceedings are brought against a foreign defendant. In both cases, jurisdiction is excluded where the action concerns an immovable property located abroad (last sentence of Articles 72 and 73).

2. Special jurisdiction in cases where the action is brought against foreign

defendants with no domicile or residence in Morocco (Article 74)

Article 74 lays down an additional set of rules on special international jurisdiction applicable where proceedings are brought against foreign defendants who have neither domicile nor residence in Morocco. In such cases, Moroccan courts may assume jurisdiction when the action concerns:

1) assets located in Morocco, or obligations formed, performed, or to be performed in Morocco (Article 74(1));

2) tortious liability where the act giving rise to liability or the damage occurred in Morocco (Article 74(2));

3) the protection of intellectual property rights in Morocco (Article 74(3));

4) proceedings relating to businesses in difficulty instituted in Morocco (Article 74(4));

5) cases involving multiple defendants, provided that at least one of them is domiciled in Morocco (Article 74(5));

6) maintenance obligations where the maintenance beneficiary resides in Morocco (Article 74(6));

7) matters relating to the filiation of a minor residing in Morocco, or to guardianship over a person or property (Article 74(7));

8) matters of personal status where

- (i) the plaintiff is Moroccan, or
- (ii) the plaintiff is a foreigner residing in Morocco and the defendant has no known domicile abroad (Article 74(8))

9) dissolution of the marital bond where

- (i) the marriage contract was concluded in Morocco;
- (ii) the action is brought by a spouse who is a Moroccan national; or
- (iii) one spouse has abandoned the other and established domicile abroad or has been deported from Morocco (Article 74(9)).

In addition, article 74 *in fine* further clarifies the ancillary heads of international

jurisdiction. In particular, Moroccan courts to hear an original action are also empowered can assume jurisdiction to adjudicate any counterclaims and related claims arising from the same legal relationship. Finally, Moroccan courts are granted jurisdiction to order conservative and provisional measures intended to be executed in Morocco, even where they lack jurisdiction over the merits of the principal dispute.

3. Jurisdiction based on the agreement of the parties (Art. 75)

The new Code also recognises party autonomy as an independent basis of international jurisdiction. Under Article 75 para. 1, even where a dispute would not otherwise fall within the ordinary heads of jurisdiction set out above, Moroccan courts may assume jurisdiction where the defendant expressly or implicitly consents to, or submits to, their jurisdiction. This jurisdiction by consent is, however, excluded where the action concerns immovable property situated abroad.

4. Ex officio declining jurisdiction in the event of non-appearance

The Code further introduces a rule aimed at preventing the exercise of jurisdiction by default (Article 75 *in fine*). Where the defendant fails to enter an appearance, the court is required, *ex officio*, to decline jurisdiction and to declare itself incompetent.

III. Recognition and Enforcement of Foreign Judgments

The new rules on the recognition and enforcement of foreign judgments are now set out in Articles 451 to 456 of the new Code. While they largely reproduce existing solutions, they nonetheless introduce several important innovations.

1. Necessity of *exequatur*

Article 451 establishes the principle that foreign judgments cannot be enforced in

Morocco as such. Their enforcement is subject to a prior declaration of enforceability (*exequatur*) by the competent Moroccan court, granted in accordance with the conditions laid down in the Code. Article 452 sets out the procedural framework governing applications for *exequatur*, while article 454 specifies the documentary requirements and the avenues of appeal applicable to *exequatur* proceedings.

2. Enforcement requirements

Article 453 sets out the substantive conditions that must be satisfied before a foreign judgment may be declared enforceable in Morocco. These requirements may be grouped as follows.

a) Requirements relating to the jurisdiction of the foreign court. First, the foreign court must not have ruled on a matter falling within the exclusive jurisdiction of Moroccan courts (Article 453(i)). In addition, the choice of the foreign forum must not have been tainted by fraud (Article 453(ii)).

b) Requirement relating to due process. Due process guarantees must have been respected, in particular insofar as the parties were duly summoned and properly represented in the proceedings before the foreign court (Article 453(iii)).

c) Requirements relating to finality and the absence of conflicting judgments. The judgment must be final and conclusive under the law of the court of origin (Article 453(iv)). Moreover, it must not be incompatible with a judgment previously rendered by Moroccan courts (Article 453(v)).

d) Requirement relating to public policy. The foreign judgment must not violate Moroccan public policy (Article 453(vi)).

e) Requirement relating to the contravention of international conventions ratified by Morocco. Finally, the content of the enforcement judgment must not contravene the provisions of any international convention ratified by Morocco and published in the Official Gazette (Article 453(vii)).

3. The reciprocity requirement

In addition to the foregoing conditions, Article 456 introduces the requirement of reciprocity as a condition for the enforcement of foreign judgments. While the application of the above requirements remains subject to international conventions binding on Morocco, the new Code now expressly requires that the existence of reciprocal treatment between Morocco and the State of origin be taken into account when ruling on an application for *exequatur*.

4. Instruments eligible to enforcement

Article 455 extends the *exequatur* mechanism beyond foreign judgments to cover titles and authentic instruments drawn up abroad. Such instruments may be enforced in Morocco provided that they were established by competent public officers or public servants and that they qualify as enforceable titles under the law of the State of origin. Their enforcement in Morocco is subject to a prior declaration of enforceability and is conditional upon the instrument being enforceable in its State of origin and not being contrary to Moroccan public policy.

IV. Comments

The introduction of new rules on international jurisdiction and on the recognition and enforcement of foreign judgments is, in itself, a welcome development. It reflects a growing awareness among the Moroccan authorities of the practical importance of private international law and an intention to provide legal practitioners and courts with a clearer and more structured framework. This development is consistent with Morocco’s increasing engagement at the international level, notably through the work of the Hague Conference on Private International Law (HCCH), an engagement that has recently culminated in the establishment of an HCCH Regional Office for Africa in Morocco.

However, from a substantive point of view, the newly adopted rules may leave a certain sense of dissatisfaction. This is due to a number of issues, most of which were already pointed out in a previous post on this blog.

1. International jurisdiction

First, as regards the legal framework governing international jurisdiction, a reading of the adopted provisions gives the impression that the legislature has remained attached to an outdated conception of private international law, and has failed to take account of more recent developments, even with respect to some fundamental issues. In particular, the new rules do not distinguish between exclusive and concurrent heads of jurisdiction, despite the practical importance of such a distinction for the recognition and enforcement of foreign judgments. Nor do they introduce specific regimes for situations requiring enhanced protection, such as disputes involving weaker parties (notably consumers and employees), or provide more detailed rules for parallel proceedings, including *lis pendens* and connexity.

More importantly, the new Code introduces a number of questionable grounds of jurisdiction. These include, in particular, the nationality of the defendant, the place of conclusion of the contract, and the mere location of property in Morocco, irrespective of its value. Finally, although the Code introduces a new rule based on party autonomy in matters of jurisdiction, it fails to provide a clear and coherent regime governing choice-of-court agreements, in particular as regards whether the parties may oust the jurisdiction of Moroccan courts that would otherwise be competent under the newly adopted rules.

2. Enforcement of foreign judgments

While the new provisions clarify the formal requirements for the enforcement of foreign judgments, they fail to take sufficient account of existing judicial practice and introduce rules that lack precision and are open to divergent interpretations.

For instance, Moroccan law does not, as a general rule, clearly distinguish between recognition and enforcement, as foreign judgments are in principle subject to a prior declaration of *exequatur*. Nevertheless, the case law of the Moroccan Supreme Court has, to some extent, developed a pragmatic approach that de facto allows the recognition of certain effects of foreign judgments even in the absence of a prior *exequatur* declaration. However, the new Code does not take these developments into account and instead adopts rules focusing exclusively on the enforcement of foreign judgments, thereby leaving the status

quo on this issue largely unchanged.

In addition, the new rules clarify the control exercised over the jurisdiction of the foreign court by introducing a twofold examination. First, the matter decided by the foreign court must not fall within the exclusive jurisdiction of Moroccan courts. However, as noted above, the new provisions on international jurisdiction fail to identify or define the matters that are to be regarded as falling within such exclusive jurisdiction. Secondly, the rules require that the choice of the court of origin must not have been fraudulent. In this respect, it should be noted that an additional requirement concerning the existence of a characteristic connection between the dispute and the State of the rendering court had initially been envisaged. This requirement, which echoed the approach adopted by the French *Cour de cassation* in the well-known *Simitch* case, was ultimately removed from the final version of the Code, arguably because of the practical difficulties it would have entailed for judges in assessing the existence of such a connection.

Furthermore, the version finally adopted introduces a new requirement that was absent from earlier drafts and appears to have been added during the legislative process. This concerns the condition that the content of the enforcement judgment must not contravene an international convention duly ratified by Morocco. The rationale for the introduction of this requirement is not only unclear, but the provision itself is largely redundant. Indeed, Articles 454 and 456 of the new Code already give priority to the application of international conventions ratified by Morocco. The provision appears also to be difficult to apply in practice, given that the manner in which this provision is formulated, particularly in the Arabic version of the text, is awkward and makes its precise scope and operation difficult to ascertain.

Finally, the introduction of reciprocity as a condition for the enforcement of foreign judgments comes as something of a surprise and is arguably problematic. The former Code of Civil Procedure contained no reference to reciprocity, and Moroccan practice had long evolved without treating it as a relevant requirement. It is true that Article 19 of the *Dahir* (Royal Decree) of 12 August 1913 on the civil status of French nationals and foreigners in Morocco refers to reciprocity. However, although that provision has never been formally repealed, the prevailing view among Moroccan scholars is that it is no longer applicable, a position reflected in judicial practice, as Moroccan courts do not rely on it in their decisions. More importantly, the inclusion of reciprocity appears at odds with the

general tendency in comparative law, which is either to abandon this requirement or to significantly limit its effect. Its (re?)introduction sends a negative signal to jurisdictions where reciprocity remains a condition for recognition and enforcement and is likely to unnecessarily complicate both the recognition of foreign judgments in Morocco and, consequently, the circulation of Moroccan judgments abroad.

V. Concluding Remarks

The general impression that emerges from a reading of the new rules is, on the whole, one of disappointment. The newly adopted provisions appear to be based on an outdated model and fail to take account of recent developments, including those observed in neighbouring jurisdictions. The content of a number of provisions gives the impression of a step backwards in time. For instance, some of the newly adopted rules, notably in matters of international jurisdiction, are comparable to those formerly found, for example, in Tunisia under the Code of Civil Procedure of 1959, which were later repealed and replaced by more modern provisions now contained in the Code of Private International Law of 1998. The new rules also do not fully reflect existing Moroccan practice, whether at the diplomatic level, where Morocco has been actively engaged with the work of the HCCH – an engagement that contributed to the establishment of its Regional Office for Africa in Morocco – or at the judicial level, particularly in the field of recognition and enforcement of foreign judgments. Available records relating to the drafting process suggest that these issues did not receive the level of attention they deserved, nor did they benefit from sufficient expert consultation or discussion that might have allowed the legislature to draw on both recent international developments and established domestic practice. One hope nevertheless remains: that the Code will already be subject to early reform.

The Reception of Hilton v Guyot and Comity in the Recognition and Enforcement of Foreign Judgments in Anglophone Africa

Introduction

Hilton v Guyot, is the most influential case in the United States—and perhaps globally—on the use of comity as a basis for recognising and enforcing foreign judgments. In that case, Justice Gray of the United States Supreme Court defined comity as follows:

"No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent of which the law of one nation… shall be allowed to operate within the dominion of another nation, depends upon… the "comity of nations"…"

Comity in the legal sense is neither a matter of absolute obligation, on one hand, nor a mere courtesy and goodwill, on the other; it is the recognition which one allows within its territory to the legislative, executive or judicial act of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under protection of its laws…"

By contrast, under English common law, the dominant basis for recognising and enforcing foreign judgments is the theory of obligation. Blackburn, J in the English case of *Schibsy v Westenholz* stated that the true principle is that,

"…the judgment of a court of competent jurisdiction over the defendant, imposes a duty or obligation on him to pay the sum for which the judgment is given, which the courts in this country are bound to enforce…"

And further on in his judgment, Blackburn J. makes it plain that the doctrine of "comity" is incorrect. Thus, no question of reciprocity could arise in an action brought upon a foreign judgment."

The theory of obligation is applied in many Commonwealth and Anglophone African countries. Interestingly, an emerging but underexplored trend is the growing consideration—and in some instances, application—of the principle of comity by courts in these jurisdictions, with several African judges expressly citing *Hilton v Guyot*.

This blog highlights selected cases illustrating this development, focusing on Liberia, Kenya, Uganda, Tanzania, South Africa, and Nigeria. The discussion is limited to the common law framework and does not address statutory regimes or international conventions.

Liberia

Liberia is a country that has historical ties of dependence to the United States located in West Africa. In *Turner v Burnette*, the Liberian Supreme Court firmly established the principle of comity in the recognition and enforcement of foreign judgments, drawing particular support from *Hilton v Guyot*. The Court further explained—by reference to another U.S. authority—that:

"*The application of comity does not rise [sic] to the effect of establishing an imperative rule of law; it has the power to persuade but not command. Comity being voluntary, and not obligatory, rests in the discretion of the tribunal of the forum and is governed by certain more or widely recognized rules." Generally, greater force and dignity will be given to judgments of foreign courts when parties have had their day in a court of competent jurisdiction, after due service of process or after an entry of appearance, and have had a full and impartial hearing upon the merits of their case; unless it can be shown that the proceedings were tainted with fraud."*

Andrew Moran and Anthony Kennedy, conclude on the basis of the above Liberian Supreme Court decision that, "*It seems, therefore, that any foreign judgment may be enforceable in Liberia at common law as a matter of comity between nations. The procedure appears to be that a suit commenced on the foreign judgment, in the same way as an action is commenced at common law in other jurisdictions.*"

Kenya

Kenya is a former colony of the United Kingdom located in East Africa. Nevertheless, Kenyan courts apply both the theory of obligation and the principle of comity in recognising and enforcing foreign judgments at common law.

In *ABSA Bank Uganda Limited (Formerly Known as Barclays Bank of Uganda Limited) v Uchumi Supermarkets PLC,* the Kenyan High Court held at paragraph 5 that,

In the absence of a reciprocal enforcement arrangement, a foreign judgment was enforceable in Kenya as a claim in common law. Where a foreign court of competent jurisdiction had adjudicated a certain sum to be due to another, a legal obligation arose to pay that sum, on which an action of debt to enforce the judgment could be maintained. In deciding whether a foreign court was one of competent jurisdiction, the courts would apply not the law of the foreign court itself but English rules of private international law. The competence of the foreign court was the competence of the court in an international sense, that was, its territorial competence over the subject matter and the defendant. Its competence or jurisdiction in any other sense was not material."

However, in a more recent case, the Kenyan Supreme Court in *Ingang'a & 6 others v James Finlay (Kenya) Limited*, relying on *Hilton v Guyot*, applied the principle of comity in determining whether to recognise and enforce a locus inspection order from Scotland (see Anam Abdul Majid and Chukwuma Okoli). After quoting the key passage from *Hilton v Guyot* with approval, the Court stated at paragraph 60 that:

"This approach prioritizes citizen protection while taking into account the legitimate interests of foreign claimants. This approach is consistent with the adaptability of international comity as a principle of informed prioritizing national interests rather than absolute obligation, as well as the practical differences between the international and national contexts."

Uganda

Uganda is a former colony of the United Kingdom located in East Africa. Nevertheless, Ugandan judges apply both the theory of obligation and the principle of comity in recognising and enforcing foreign judgments at common law.

At common law, the principle of comity, with key reference to *Hilton v Guyot,* also formed the sole basis of recognising and enforcing a US judgment in the earlier Ugandan case of *Christopher Sales v Attorney General.*

More recently, Ugandan courts have justified the recognition and enforcement of foreign judgments by reference to the theories of obligation, comity, and reciprocity. In the very recent case of *Brianna v Mugisha*, Justice Nagawa, after a careful consideration of Ugandan case law authorities and *Hilton v Guyot*, stated that:

"5.4 However, I have observed that despite the absence of a statutory reciprocal arrangement, Ugandan courts have recognized and enforced foreign judgments under the common law principles of obligation, reciprocity, and comity.

5.5. These doctrines provide a legal foundation for cross-border judicial cooperation, particularly in the absence of a formal treaty or statutory framework, such as in the case of Uganda and the United States.

5.6. The doctrine of comity is based on mutual respect between sovereign states. It allows a court to recognize and enforce a foreign judgment not as a matter of strict legal obligation, but out of respect to the foreign court's authority and fairness in its proceedings. Courts apply comity where: the foreign court had competent jurisdiction over the matter and the parties, the proceedings were conducted fairly, with due process observed and enforcing the judgment would not be contrary to public policy in the recognizing jurisdiction.

5.7. The obligation theory treats a valid foreign judgment as creating a legal duty on the judgment debtor to comply, similar to a contractual obligation. This approach holds that once a court of competent jurisdiction has determined a party's liability, that decision should be

respected and enforced in other jurisdictions unless there is a compelling reason not to do so, such as: Fraud in obtaining the judgment, Violation of natural justice, or a fundamental defect in jurisdiction.

5.8. Under reciprocity, a foreign judgment will only be enforced if courts in the originating country would likewise enforce judgments from the enforcing country. This principle ensures mutual legal cooperation between jurisdictions."

It must be noted, however, that the recent acceptance of reciprocity in Uganda as a basis for recognising and enforcing foreign judgments at common law represents a significant departure from the position in other Anglophone and Commonwealth African countries, as well as Commonwealth jurisdictions more generally. It should also be emphasised that the court's remarks on the applicability of reciprocity at common law were, at best, obiter, as the court did not apply the doctrine to the facts of the case.

Tanzania

In Tanzania, a significant number of recent cases have used foreign judgments to preclude new actions on grounds of res judicata, obligation, and comity (*Exim Bank (COMORES) SA vs Costa Sari; Standard Chartered Bank (Hong Kong) Limited & Another vs Independent Power Tanzania Limited & Others*)

South Africa

South Africa, located in Southern Africa and formerly colonised by both Britain and the Netherlands, is a mixed legal system drawing from Roman Dutch law and the common law. The theory of obligation remains the dominant basis for the recognition and enforcement of foreign judgments. This position was affirmed by the Supreme Court of Appeal in *Jones v Krok*, where the Court endorsed the English authority of *Nouvion v Freeman* as support for applying the obligation theory in recognising and enforcing foreign judgments

However, in *Government of the Republic of Zimbabwe v Fick*,, the Constitutional Court referred to the principle of comity to justify the development of the common law framework for recognising and enforcing judgments from international courts, signalling a limited but notable openness to comity based reasoning.

Nigeria

Nigeria is a former colony of the United Kingdom and is located in West Africa. Under the common law regime, it applies the theory of obligation in the recognition and enforcement of foreign judgments (*Alfred C Toepfer Inc v Edokpolor).*

However, some Nigerian judges at the Supreme Court have proposed comity, jurisdictional reciprocity, and the facilitation of international trade and commerce as additional bases for enforcing foreign judgments (Grosvenor Casinos Ltd v Ghassan Halaoui (2009) 10 NWLR 309, 338–39 (Oguntade JSC)), but there has been no reported case where these proposals have been implemented in practice.

Conclusion

The purpose of this post is to highlight how selected Commonwealth and Anglophone African courts have received and applied the principle of comity in the recognition and enforcement of foreign judgments under the common law, particularly as articulated in *Hilton v Guyot*.

At present, Liberia is the only jurisdiction that fully applies the principle of comity as advanced in *Hilton v Guyot*, arguably influenced by its historical ties to the United States.

Kenya, Uganda and Tanzania apply the doctrine of obligation alongside the principle of comity.

South Africa primarily follows the doctrine of obligation, although a few cases have considered comity in the context of recognising and enforcing foreign judgments, albeit without concrete application.

In Nigeria, courts continue to rely principally on the doctrine of obligation at common law. Although some Supreme Court justices have proposed comity as a possible basis for enforcement, this has not been implemented in practice.

Overall, the doctrine of obligation remains the dominant common law basis for the recognition and enforcement of foreign judgments across Anglophone and Commonwealth Africa. Nonetheless, the principle of comity, as developed in

Hilton v Guyot, continues to play an important role in shaping the jurisprudence of a limited number of African jurisdictions.

No Exequatur Granted for a Panamanian Judgment in Greece Due to Public Policy Considerations [Piraeus Court of First Instance Case No. 2040/2026, Unreported]

INTRODUCTION

Following a significant hiatus, the public policy defense has re-emerged prominently in discussions surrounding the enforcement of foreign judgments, particularly in the context of a judgment issued by the Panama Maritime Court in 2024. The primary issue addressed by the Greek court was whether a foreign judgment could be recognized and enforced when the foreign court denied appellate proceedings due to the failure to post a security deposit that was both substantial and necessary for the appeal process.

FACTUAL BACKGROUND AND LEGAL FRAMEWORK

The case involved a claim for damages between a company based in Hong Kong and another company registered in the Marshall Islands. This dispute was adjudicated under Panama’s maritime law, established by Law 8 of 1982 and

updated by Law 55 of 2008, which governs maritime-related disputes through a specialized and efficient legal framework. The Panamanian maritime courts possess exclusive jurisdiction over in rem actions, enabling prompt vessel arrests and maritime liens within both Panamanian territorial waters and the Panama Canal for claims related to damages, cargo issues, and collisions.

The Panamanian court ruled in favor of the claimant, mandating the defendant to either return the vessel or pay approximately 45 million USD, i.e., the valuation of the vessel along with associated legal costs, as ordered by the court.

Subsequently, the judgment creditor sought recognition and enforcement of the Panamanian judgment in Greece, as the vessel was docked within Greek territorial waters.

The opposing party contended that the ruling from the Panamanian Naval Court of First Instance contravened Greek public policy and the European Convention on Human Rights (ECHR), primarily because the appellate process was effectively obstructed. According to Article 490 of Panama's Maritime Courts and Disputes Law, the appellant was required to deposit a security of nearly 45 million USD (equivalent to the judgment amount and associated legal fees) within ten days to have its appeal considered.

The original text from Article 490 reads:

"Artículo 490. Para cursar la apelación se requerirá la consignación, ante la secretaría del Tribunal Marítimo de primera instancia, de una caución que garantice el pago del monto de la condena más las costas. Para determinar el monto de la caución se considerará la caución consignada para levantar el secuestro o el valor del bien secuestrado. Dicha caución será consignada dentro de los diez días siguientes a la notificación de la providencia que admita el recurso. Si el apelante no consigna la caución de que trata este artículo, el juez declarará desierto el recurso."

In light of the above, the excessive requirement for a security deposit resulted in the judgment debtor's appeal being dismissed, thereby forfeiting its right to be heard.

FINDINGS OF THE GREEK COURT.

The Greek court recognized that while imposing a financial guarantee as a prerequisite for appeal can have legitimate justifications, such as discouraging vexatious litigation and promoting judicial efficacy, the circumstances in this case revealed that the requirement was manifestly disproportionate and unduly burdensome. The court articulated the following concerns:

– The required guarantee matched the total amount of the initial judgment plus costs.

– There was no cap, no exceptions, and no discretion for reduction based on the specifics of the case.

– It effectively forced the appellant to comply with the first-instance judgment in full just to access the appeal process.

The court referenced Article 323(5) of the Greek Code of Civil Procedure, which encompasses the public policy clause, confirming that the security requirement violated the principle of proportionality. Furthermore, limiting access to the court and undermining judicial protection directly contravened Article 6(1) of the ECHR and Article 20, paragraph 1 of the Greek Constitution.

Consequently, the obligation to deposit an amount of USD 44,397,715.97, which constitutes the awarded sum of the initial judgment (USD 41,248,107.88) plus legal costs (USD 3,149,608.09), was viewed as an untenable financial burden that contradicts the right to judicial protection.

More specifically, the imposition of a security deposit that equaled the judgment amount plus legal fees, with no statutory limits, exceptions, or discretionary reduction possibilities, violated public policy. This requirement substantially infringed upon the appellant’s right to access judicial remedies against an enforceable ruling.

Finally, the court noted that while Greek law allows for provisional enforceability of first-instance judgments under certain conditions, including the possibility of appeal suspension without a guarantee if there is a likelihood of success, such provisions were absent in Panamanian law.

Non-Qualifying Ceremonies: The Futility of Foreign Registration of Islamic Marriages under English Law

This blog note is kindly provided by Dr. ***Muhammad Zubair Abbasi*** *(Lecturer, School of Law, Royal Holloway, University of London; zubair.abbasi@rhul.ac.uk).* *It follows the author's previous post on this topic, which was published earlier* ***on this blog****.*

Introduction

In *MA v WK* [2025] EWFC 499, three women had undergone Islamic marriage (*nikah*) ceremonies in England. Each argued that subsequent registration of her marriage in Pakistan had converted it into a valid foreign marriage entitled to recognition in England and Wales. The Family Court rejected this argument because the *lex loci celebrationis* is fixed at the place and moment of the ceremony; no later act of registration in another jurisdiction can alter it.

The more important question is why the argument was made at all. Each applicant had already accepted that her ceremony was a non-marriage or non-qualifying ceremony (NQC) under English matrimonial law. Each had therefore been excluded, by the rule established in *Attorney General v Akhter & Others* [2020] EWCA Civ 122 from the financial remedies that the Matrimonial Causes Act 1973 would otherwise have provided. The argument from Pakistani registration was, in substance, a desperate attempt to find through private international law a route that domestic law had closed. It was always going to fail but the fact that it was attempted is itself instructive. When the law systematically denies recognition to a form of marriage that a significant part of the population regards as valid, litigants will look for whatever route remains open. *MA v WK* is a

record of one such attempt, and it is unlikely to be the last as long as the existing legal framework remains unreformed.

The Facts

There were three female applicants, each of whom had celebrated a *nikah*-only in England and sought to rely on subsequent registration in Pakistan. The first, MA, had celebrated a *nikah* with WK in Oxfordshire on 1 April 2013. She produced a Pakistan Marriage Registration Certificate recording both the marriage date and entry date as 1 April 2013, with an issue date of 26 August 2024. The second, TM, had celebrated a *nikah* with MM at a mosque in England on 19 January 1992. She produced a Pakistan Marriage Registration Certificate, but the entry date was 2 October 2025 — thirty-three years after the ceremony and after MM had already remarried in Pakistan in 2017. The third, AM, had celebrated a *nikah* with RK in England in 2005. No evidence of registration was produced.

Non-Qualifying Ceremonies and Private International Law

The formal validity of a marriage is governed by the *lex loci celebrationis*, as restated by Moylan LJ in *Tousi v Gaydukova* [2024] EWCA Civ 203. All three ceremonies took place in England; all three applicants accepted that none had complied with the Marriage Act 1949. Each was therefore a non-qualifying ceremony (NQC). The question was whether subsequent registration in Pakistan could convert them into valid foreign marriages capable of recognition in England and Wales. The court held that it could not: the *lex loci* is determined by the place of celebration, not by any later administrative act. There is no authority for the proposition that registration can substitute for, or supplement, the ceremony for the purposes of legal recognition.

The applicants advanced two arguments. First, that registration is the operative event for *lex loci* purposes, deriving from *Sottomayor v De Barros (No 1)* (1877) 3 PD 1, a principle elevating it to the “pinnacle” of matrimonial law [para 16]. That reading does not survive examination: in *Sottomayor* ceremony and registration

happened simultaneously at an English register office, and their coincidence does not make registration the constitutive event. The three further authorities relied upon, *Boughajdim v Hayoukane* [2022] EWHC 2673; *Entry Clearance Officer v Firdous* [2018] HU/04562/2016 (Upper Tribunal); and *Farah v Farah* 16 Va. App. 329 (Va. Ct. App. 1993), each turned on where the ceremony, or its dominant elements, had taken place. None held that registration of an English ceremony abroad could shift the *lex loci*; they are authority for the opposite proposition.

The second argument assumed what it needed to prove. The principle in *Berthiaume v Dastous (*Quebec) [1929] UKPC 73*,* that a marriage valid where celebrated is valid everywhere, operates in favour of a marriage validly formed at its place of celebration. It avails nothing where the ceremony was not valid there in the first place. A further difficulty lay in Pakistani law itself. On the expert evidence, accepted in *Rana v Manan* 2011] EWHC 2132 and applied here, registration under section 5 of the Muslim Family Laws Ordinance 1961 is directory rather than mandatory: it is the *nikah* contract that creates the marriage. What Pakistani law had done in registering these marriages was not to create new Pakistani marriages, but to record marriages that Pakistani law treated as having taken place in England.

On the presumption of marriage, the answer was straightforward. The presumption, as Evans LJ explained in *Chief Adjudication Officer v Bath* 1999] EWCA Civ 3008 at [31]–[32], fills evidential gaps; it does not operate where there is positive evidence of non-compliance with the statutory formalities. The circularity this produces is uncomfortable. A party who wishes to argue for recognition of her marriage must disclose to the court the circumstances of the ceremony; and once she has done so honestly, she will typically have foreclosed the only doctrine that might have assisted her.

Commentary

The judgment in this case is the latest in a sequence that has progressively narrowed the legal options available to parties in religious-only or a nikah-only marriages. Until *Attorney General v Akhter & Others* [2020] EWCA Civ 122, the courts had available to them a range of tools: the “hallmarks of marriage” test from *Gereis v Yagoub* [1997] Fam Law 475; the presumption of marriage from

long cohabitation from *Chief Adjudication Officer v Bath*1999] EWCA Civ 3008; and a generally flexible approach to the non-marriage category, which had been applied in reported cases almost exclusively to polygamous unions (*A-M v A-M (Divorce: Jurisdiction: Validity of Marriage)* [2001] 2 FLR 6; *Gandhi v Patel* [2002] 1 FLR 603; *Shagroon v Sharbatly* [2012] EWCA Civ 1507; and *El Gamal v Al-Maktoum* [2011] EWHC B27.

The Court of Appeal's introduction of the NQC category in *Attorney General v Akhter & Others* [2020] EWCA Civ 122 changed the landscape. A court asked to classify a religious-only ceremony now asks a single, decisive question: did the ceremony comply, at least to some degree, with the statutory requirements? If the answer is no, the ceremony is outside the regulatory framework entirely, and neither the hallmarks test nor the presumption can operate to bring it back in. The present case is a private international law application of the same logic: the question is what happened at the ceremony, assessed as at the date of the ceremony, and later events, including registration abroad, are irrelevant.

The choice of jurisdiction made no difference to that conclusion. The applicants sought declarations of marital status under section 55(1) of the Family Law Act 1986, which enables a person to apply for a declaration that a marriage was at its inception valid, or that it subsisted on a particular date. That jurisdiction is declaratory, not constitutive: it identifies the status that the law recognises, it does not create one. The argument from foreign registration was in substance an invitation to the court to use the section 55 jurisdiction to confer a status that English law does not recognise. It was always going to fail, not because of any deficiency in the evidence or any technical point of procedure, but because the declaratory jurisdiction cannot be deployed as a means of circumventing the requirements that the Marriage Act 1949 imposes.

None of this is a criticism of the applicants, who were doing what people in their position typically do: looking for whatever route the law might offer. It is a comment on the law itself. The Attorney General had foreshadowed a public policy objection under section 58(1) of the 1986 Act had the court found in the applicants' favour, an indication that the state's interest in maintaining the integrity of the marriage framework is regarded as sufficiently strong to resist even a successful argument from foreign registration [para 30]. That the argument failed means the public policy point did not arise, but its potential invocation confirms that the current framework is not one the courts are inclined

to look for ways around.

Conclusion

The decision in *MA v WK* is easy to justify on the law as it stands. The *lex loci celebrationis* is not a rule that administrative convenience in another jurisdiction can displace, and the section 55 jurisdiction does not exist to remedy the deficiencies of the Marriage Act 1949. But the case is a reminder that when domestic law closes every available door, litigants will look elsewhere.

The failure in this case is not one of private international law. The Marriage Act 1949, built on foundations laid by Lord Hardwicke's Clandestine Marriages Act 1753, which transformed the private marriage contract into a public act requiring the sanction of the church-state — was not designed with cultural and religious diversity in mind. The Government has committed to reform. But the proposed changes are prospective. They will not assist the three women in this case, nor the many others in the same position. Until Parliament addresses that gap, family courts will continue to turn away women whose marriages are real to everyone except the law.

A few takeaways from the Conclusions & Decisions of the HCCH governing body (CGAP – 2026 meeting): parentage/surrogacy, jurisdiction

project, cross-border recognition and enforcement of protection orders and a Note on the Trusts Convention

This week the Conclusions & Decisions (C&D) of the HCCH governing body, the Council on General Affairs and Policy (CGAP or Council), were published. Click the links below for the relevant language versions (English, French and Spanish).

Although a wide range of topics were discussed, I would like to focus on four items: parentage/surrogacy project, the cross-border recognition and enforcement of protection orders, the jurisdiction project and a Note on the Trusts Convention.

In my view, the C&D are significant for two reasons. First, the work related to a possible new instrument of a long-standing topic at the HCCH has been concluded (without a Convention) and secondly, a "new" topic has been inserted into the agenda of the HCCH. For more information, see below.

Parentage/surrogacy project

The parentage/surrogacy project has been a recurrent topic in the work of the HCCH. It has expanded more than a decade, starting in 2010 with some preliminary research, which resulted in the establishment of an Experts Group (EG) and subsequently, a Working Group (WG).

In preparation for this meeting, a document was drawn up by the Working Group (WG) on Parentage / Surrogacy entitled: *Final Report on the Feasibility of a possible Convention on the Recognition of Judgments on Legal Parentage* (Preliminary Document (Prel. Doc.) No. 1). This is a monumental work, which includes a text of a draft Convention (as of p. 13).

The specific proposal of the WG to the Council was the following:

"The WG acknowledged the importance of the HCCH Parentage / Surrogacy Project to develop an international instrument on legal parentage in cross-border situations. The WG agreed that such an instrument is desirable, as it could

enhance legal certainty, predictability and continuity while protecting the rights of children and families, and all persons involved."

It further acknowledged that policy differences remained and for some experts these were fundamental, and as a result, consensus could not be reached on a way forward (*i.e.* advancing to a Special Commission, which is the usual path when negotiating a HCCH Convention and which are meetings held prior to a Diplomatic Session).

With this Final Report, and as its name suggests, the work of the WG has concluded and this Preliminary Document is the last document drawn up by the WG on this topic.

Reflecting the disagreement existing at the WG level, the Council decided on this topic the following: "While recognising the progress made by the Working Group, CGAP decided not to advance to a Special Commission at this stage, with the understanding that this issue may be revisited at a later stage."

Accordingly, this year marks the end of this project (if not the end of an era), with the exception of monitoring legal and practical developments on the subject that are to be presented at the 2028 meeting of the Council (C&D No. 5). Perhaps this topic may be revived in the future when and if the time is ripe.

Cross-border recognition and enforcement of protection orders

While the ashes of the Surrogacy/Parentage project were still warm, a "new" proposal for a Convention emerged and was tabled by the UK as: *Prel. Doc. No 25 of January 2026 – Proposal from the United Kingdom to establish a Working Group on Recognition and Enforcement of Protection Orders* – not publicly available.

The Council mandated the establishment of a WG on a potential future convention on cross-border recognition and enforcement of protection orders (see C&D No. 22).This is remarkable and underlines the importance of keeping women and children safe. By tabling this proposal, the UK makes clear that this is an absolute priority.

This initiative will build on previous work conducted by the Permanent Bureau from 2011-2018, during which an Experts Group was established (see C&D No.

23 and 24). At its 2018 meeting, the Council noted that “14. The Council decided to remove from the Agenda of the HCCH the topic of recognition and enforcement of foreign civil protection orders, with the understanding that this issue may be revisited at a later stage.” A statement that now is history.

This will be an important initiative to follow in the future.

Jurisdiction project

The decision on the future of the jurisdiction project has been delayed until the next meeting of the Council in 2027. At that meeting a decision will be made whether that project advances to a Special Commission “or decide on any other outcome of the Project” (C&D 9).

A Report of the Chair of the Working Group on matters related to jurisdiction in transnational civil or commercial litigation was presented as Prel. Doc. No 2A of December 2025. This Report includes a draft text of a future convention on parallel proceedings and related actions (from p. 13, with many [square brackets], signalling lack of consensus or agreement on the text).

Last year a public consultation was launched on the Draft Text of a possible new convention on parallel proceedings and related actions, the results of which still need to be analysed. The Council mandated that a document be submitted analysing such responses by the end of September 2026 and gave specific instructions on how it should be drafted (C&D No. 8). The responses will be published subject to the permission of the respondents.

We will keep you informed of any new developments.

A Note on the Trusts Convention

Finally, a Note on the Application and Interpretation of Article 2 of the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition and on the Institutions Analogous to Trusts was submitted as Prel. Doc. No 12B of January 2026 (for the actual Note see Annex V, p. 25). In particular, a fascinating explanation of the terms used in English (estate) and French (patrimoine) is included in pages 28-29. Equally interesting is Annex A to Note (for Section V) – Institutions Meeting the Criteria in Article 2 of the Trusts Convention. This Note was approved and will be published together with its

Annexes (C&D 69).

In sum, this Council's meeting decided on crucial matters related to treaty making on Private International Law at the HCCH. The next meeting of the Council in 2027 will also be of great importance as it will decide on the future of the jurisdiction project. With regard to specific projects, the cross-border recognition and enforcement of protection orders attests to the fact that a topic can indeed return to the agenda of the HCCH, and thus some experts may harbour the wish that the parentage/surrogacy project may rise one day like a phoenix from the ashes.

Muscles from Munich? How German Courts Might Stop US Companies from Violating Copyright through AI Training

Yesterday, the Regional Court of Munich (*Landgericht München I*) held a highly interesting oral hearing in a dispute brought by *GEMA*, a German collecting society representing composers, and *Suno*, a generative music AI company based in Cambridge, MA. The hearing was noteworthy, first, because it gave the public an opportunity to listen to numerous international hits, from Alphaville's Forever Young to Lou Bega's Mambo No. 5 (and their alleged copies created by *Suno*) in a courtroom; and secondly, because the dispute raises some interesting questions of private international law.

After *GEMA* had already scored a famous victory against *OpenAI* in November 2025, when the same chamber of the Munich Court had held that the company

had been violating the copyrights of several artists and composers by reproducing their song texts, the present proceedings differed not just in scope (focusing on the musical arrangement rather than texts) but also in its international dimension. For the first time, the claimant explicitly included the use of the protected works for training that had happened (according to both parties) exclusively in the US.

As far as those claims are concerned, the main obstacle to overcome for the claimant is the German court's jurisdiction. As Germany has no (codified) law on international jurisdiction over non-EU defendants, international jurisdiction is established by extending the rules on local jurisdiction (venue) to international jurisdiction (so-called 'double funtionality'; see Lutzi/Wilke, in Lutzi/Piovesani/Zgrabljic Rotar (eds), Jurisdiction over Non-EU Defendants (Hart 2024), 111 et seq). In the present case, this appears to provide an opportunity for the claimant to rely on a little-known norm of the German *Verwertungsgesellschaftsgesetz* (VGG; own translation and emphasis):

> ***§ 131 Exclusive Jurisdiction***
>
> *(1) For legal disputes concerning claims by a collecting society for infringement of a right of use or right of consent administered by it, the court of the district in which the* ***infringing act was committed*** *or in which the infringer has their* ***general place of jurisdiction*** *shall have* ***exclusive jurisdiction****. (…)*
>
> *(2) If, pursuant to paragraph 1, sentence 1,* ***different courts*** *have jurisdiction for multiple legal disputes against the same infringer,* ***the collecting society may bring all claims before any one of these courts.***

While the provision is clearly aimed at allocating local jurisdiction within Germany, nothing in its wording seems to exclude an international understanding, similar to other norms on local jurisdiction. While this would create a clearly exorbitant *forum actoris* for German collecting societies in cases falling under paragraph 2, this might be justified by the peculiar nature of collecting societies, which are heavily regulated in German law and are required, for instance, to enter into licensing agreements under 'appropriate' conditions (§ 34 VGG). Indeed, the Munich court appeared rather amenable to the proposition of applying § 131 VGG internationally.

In the present case, this would raise further interesting questions.

For once, does paragraph 1, according to which the courts of the place of infringing and the courts of the defendant's seat are competent, lead to 'different courts' being competent in the sense of paragraph 2? Traditionally, the provision was supposed to solve the problem of traveling showmen performing committing similar infringements in numerous places. As far as the training of AI is concerned, there might only be a single place of infringement, though. Then again, paragraph 2 only requires multiple competent courts for proceedings 'against the same infringer', which should allow other infringements, such as the streaming of allegedly copyright-violating output in Germany to be taken into account.

Assuming that the court would not consider this sufficient to trigger the *forum actoris* of paragraph 2, it would need to answer another question, namely if paragraph 1 as a rule of exclusive jurisdiction would also prevent the claimant from (subsidiarily) relying on § 23 of the Civil Procedure Code (ZPO), which creates jurisdiction at the location of the defendant's property. In other contexts, authors have argued that provisions of exclusive *local* jurisdiction should not be understood as provisions of exclusive *international* jurisdiction so as not to render the recognition and enforcement of decisions from other fora impossible.

If the Munich court accepted its international jurisdiction on either of those bases, the applicable law would, of course, still be US copyright law (including its relatively far-reaching exceptions for 'fair use', which the defendants argue should apply here) pursuant to Article 8 Rome II. Thus, if the decision – which has been scheduled for **12 June** – includes a positive decision on international jurisdiction regarding the US-based training, it might not yet include a decision on the substance in this regard, but could instead include an order for expert evidence on foreign law (§ 293 ZPO).

The claimants would understandably still consider this as a win, though, as it would provide a basis for future claims by German collecting societies against AI companies. In this sense, it would fit neatly into what *Linda Kuschel* and *Darius Rostam* have described, in reaction to the previous decision against OpenAI, as '*the current popular narrative of a tightly regulating EU that protects rightsholders and a US that favors AI-friendly market solutions.*' While the Munich judges said rather little about their own preferred interpretation of the

law at yesterday's hearing, especially with regard to international jurisdiction, they also made no effort to dispel this narrative.

German Federal Court of Justice on the Pegasus-Software Scandal: States do not have a general right of personality

This case note is kindly provided by *Dr. Samuel Vuattoux-Bock, LL.M. (Kiel)*, Freiburg University (Germany)

On February 24, 2026, the German Federal Court of Justice ruled on the Kingdom of Morocco's claim against the German news portal "Zeit Online" (Case no. VI ZR 415/23). In 2021, the journal alleged that Morocco had spied on several lawyers, journalists, and high-ranking politicians, including French President Emmanuel Macron, using the surveillance software "Pegasus". Morocco denied the allegations and sued the publication for damages, claiming an infringement of its general right of personality. The Federal Court of Justice of Germany, the highest court for civil and criminal matters, rejected Morocco's claim, arguing that states do not have such a right. This decision is interesting because it lies at the intersection of private international law, national tort law, and public international law. The following article aims to present the main points of this decision in terms of both its international and substantive aspects.

I. Aspects of Private International Law: A too Easy Gateway into German Law?

First, the court had to determine if it was competent and which law should apply to this claim (Nos. 7 et seq.). Despite the claimant's status as a Third State, the

application of the Brussels Ibis Regulation (EU 1215/2012) was unproblematic here. Morocco's claim was not made "in the exercise of State authority (acta iure imperii)" (Art. 1(1) Brussels Ibis), and the defendant is based in a European Union Member State (Hamburg, Germany).

However, the determination of the applicable law revealed some hesitation on the part of the Court (Nos. 11 et seq.). Surprisingly, the Court did not decide whether the Rome II Regulation or German autonomous private international law should apply to the case (no. 13). Although the court considered the possible application of the exception of Art. 1(2)(g) Rome II ("non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation."), the Court did not address whether an infringement of a legal person's reputation falls under this exception (nos. 15 and 16). However, infringements of rights relating to personality through the media clearly fall under the exception of Art. 1(2)(g) Rome II. The debate about applying this exception to legal persons is actually caused by the application of the Rome II Regulation to claims related to unfair competition (Art. 6(1) and (2) Rome II), not by their mere quality as legal persons (see CJEU, ECLI:EU:C:2017:766, Bolagsupplysningen and Ilsjan, mn. 38). However, the present case is not related to business matters or competition claims; therefore, the exception of Art. 1(2)(g) Rome II should clearly apply.

Therefore, German private international law should apply, which the Court also examined (nos. 18 et seq.). The Court found that the parties had made an implied choice-of-law agreement for German law (no. 19). The Court ruled that, throughout the entire procedure, the parties' exclusive reference to substantive German law satisfied the conditions of such an agreement under Art. 14(1)(a) Rome II (no. 17) and Art. 42 of the Introductory Act to the Civil Code (EGBGB). This decision, if it can be understood, left some kind of an aftertaste of insecurity of the Court, as it appeared to be the simplest way to reach German law. Art. 40 EGBGB, relating to the applicable law for torts, allows the claimant to choose between the place where the harm arose (*Erfolgsort*) and the place where the event which gave rise to the harm occurred (*Handlungsort*). The eventual question of the claimant's (Morocco) choice for determining where the harm occurred would have led to the well-known difficult question of the localization of such an infringement through the Internet and the possible application of Moroccan law. In such a case, the Court would also have had to consider the application of Art. 40(3)(2) EGBGB, which states that this law is inapplicable if the

claimant's purpose is not actually to seek compensation (e.g. to exert pressure on the defendant). The Court did not address these issues and concluded that German law applies.

II. Aspects of Substantive Law: A Panorama of Public International Law for the Benefit of Private Law

German tort law is based on a restrictive approach. The central norm, Sect. 823(1) of the Civil Code (BGB), lists the legally protected rights: Life, Body, Health, Freedom, Property and "other right". This last category allows for the protection of interests comparable to those listed, such as the right to one's personality, or the protection of victims from certain types of professional pure economic loss. Schematically, damages can only be granted for other interests if the tortfeasor infringed upon a protective law (Sect. 823(2) BGB) or if the harmful act is immoral (Sect. 826 BGB), which conditions are stricter.

Therefore, the claimant first tried to obtain damages based on the general case law regarding the infringement of personality rights under Sect. 823(1) BGB, and second, based on the infringement of criminal laws as protective laws under Sect. 823(2) BGB. However, the claims based on criminal legislation (Sect. 90a, 90b, 185 et seq., 102 to 104a of the Criminal Code, StGB) failed because foreign states are not subject to these norms (nos. 62 et seq.).

Therefore, the debate focused on Sect. 823(1) BGB and, logically, if such a right of personality also exists for states. After establishing that domestic law does not grant states such a right according to settled case-law (nos. 21 et seq.), the Court considered whether such a right exists as a general principle of public international law (nos. 23 et seq). In doing so, the Court examined an extensive body of case law (nos. 28 et seq.) from international courts and arbitral tribunals, the European Court of Humans Rights, diverse international and regional organizations (e.g. the Council of Europe, the European Union, the OSCE…) and national courts (USA, England, Scotland, France and Germany). The Court concluded that a protection of an alleged right of personality for states against private individuals does not exist. Most of the relevant decisions involve cases concerning diplomats or claims from state to state. In fact, the Court noted that

many organizations encourage states to refrain from suing journalists regarding questions of the state's reputation to guarantee freedom of speech and press freedom (cf. no. 54). Although the Court does not explicitly refer to it, the idea of extracontractual liability that does not "open the floodgates" of liability, as well as the weighing of interests, are typical to German tort law. The interest of a foreign state in protecting its honor against statements by private individuals is neither necessary nor worthy of protection under civil law.

III. Final remarks

By ruling that foreign states do not have a right of personality that can be enforced against private individuals, the German Federal Court aligned itself with the decision of the French Cour de Cassation. The highest French court for civil and commercial matters also decided on the very same case in 2024, i.e. a claim of the Kingdom of Morrocco against a French journal regarding the very same accusations. In this case too, the French Cour de cassation – without spending a word on the aspects of private international law – decided that "a foreign state is not entitled to bring a public defamation action against an individual" (no. 12). These decisions are certainly welcome, as they reinforce the independence of the press against foreign attempts to influence press freedom in Europe, especially in these troubled times.