

The Moroccan Community Abroad and the Provisions of the Family Code Bill

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According to the statistics of the Directorate of Consular Affairs of the Moroccan Ministry of Foreign Affairs for March 2003, the number of Moroccans residing abroad (MRA) stands at 2,185,894 in Europe; 231,962 in Arab countries; 155,432 in America; 5,355 in Africa and 3,350 in Asia and Oceania.

Since the 1970s, it has no longer been the case that Moroccan migrants are single young men who travel abroad to work and later return to live in their country. Such migrants now mainly consist of families formed through family reunification or as a result of marriages that take place in other countries. Very frequently, these families use to keep ties with Moroccan culture. However, migrants return to Morocco on an increasingly infrequent basis and migration is becoming more a process of permanent settlement in the receiving countries.

This change in the nature of Moroccan migration to foreign countries makes the law governing families very important. However, until 2003, Moroccan family law had not evolved to any great extent. At times, in fact, it represented a major obstacle to the development of families living in certain foreign countries and impelled migrants (particularly females) to opt to apply the law of the relevant receiving country, in the case of dual Moroccan and European nationality.

Personal status law overlooked the

specific situation of Moroccan families living abroad and was the cause of various problems, particularly in cases of migration to non-Muslim receiving countries where laws are based on universally accepted definitions of human rights.

The new provisions of the family code are innovative, in that for the first time they introduce specific rights for MRA and a balance within Moroccan families. Nevertheless, the code still has limitations with regard to full protection for all members of the family.

The New Provisions of the Family Code

The 2003 Family Code bill represents a cultural revolution, as a result of inclusions dealing with the dedication of certain specific provisions to MRA, the establishment of a degree of equality between spouses and the protection of the rights of children, and could prove to be particularly beneficial for Moroccan families both in and outside the country, in comparison to the former provisions of the *Mudawana* or Personal Status Code.

All the innovative provisions of the Family Code bill will apply to Moroccan families living abroad, and will undoubtedly facilitate their residence in non-Muslim foreign countries. The establishment of a degree of equality between husband and wife in relation to family duties and rights is unquestionably a step forward for Moroccan family law, and will certainly allow for greater alignment with European legislation in this area.

Article 14 of the bill specifically refers to MRA. It stipulates that: «Moroccans

residing abroad may enter into marriage in accordance with local administrative procedures, provided that the conditions of consent and suitability are met, that there are no legal obstacles thereto, and that the *sadaq* (dowry) is not waived; and in the presence of two Muslim witnesses and of the *wali* (guardian), if necessary».

Article 15 adds that: «Moroccans who have entered into marriage in accordance with local legislation shall be obliged to present a copy of the certificate to the Moroccan consulate in the jurisdiction to which the area in question corresponds or under the competence of which the act has been undertaken, within a period of three Gregorian months. In the case of there being no Moroccan consulate, the copy must be sent, within the same period, to the Ministry of Foreign Affairs. The consulate or Ministry of Foreign Affairs shall subsequently send the copy in question to the registrar of the place of birth of both spouses and to the family court. In the event of both spouses not having been born in Morocco, the copy shall be sent to the registrar and to the family court of the city of Rabat».

Article 68 refers to the registration of marriage certificates and states that where nationals born outside of Morocco are concerned, a summary of the certificate is to be sent to the public prosecutor's office of the court of first instance of Rabat. The same applies to divorce certificates, according to Article 141.

Marriages between Moroccans and foreigners are usually governed by *Dahir* No. 020-60-1 of 4 March 1960, on marriage between Moroccan males and foreigners and between Moroc-

can females and foreigners. However, the Code Bill also covers marriages in these categories. Article 65 requires a certificate of suitability for foreigners marrying Moroccans, and a certificate of conversion to Islam for non-Muslim foreigners marrying Muslim Moroccan females. The marriage of Moroccans with Jewish beliefs is subject to the Jewish Code rather than to the Code Bill under discussion here. The Jewish Code does not appear to be sufficiently egalitarian at present. A review will be necessary to amend this problem, and to bring it into line with Morocco's international commitments, as well as in order to make it possible for the Moroccan Jewish community residing abroad to refer to the Code without problems.

Article 128 of the Family Code Bill states that decisions made by foreign courts in relation to divorces between Moroccans or between Moroccans and foreigners are binding in Morocco, provided that such decisions emanate from specialised courts and do not contradict the provisions of the Family Code Bill itself, and on the condition that they undergo the exequatur procedure envisaged by Articles 430, 431 and 432 of the civil procedure code. Article 128 also declares any act that is entered into in a foreign country in the presence of specialised public officials or officers to be binding.

The Scope and Limitations of the Family Code Bill

If adopted, there can be no doubt that the bill will make family life easier for Moroccans abroad, and it will partially comply with Morocco's international commitments with regard to the rights of children and women. On 21st June 1993, Morocco approved the International Convention on Children's Rights of 20th November 1989. On the same date, it also approved the Convention on eradicating all forms of discrimination against women of 18th December 1979. These two conventions represent genuine international charters with relation to the rights of women and children.

However, Moroccan internal law has not always been in line with the provi-

sions of these two conventions. Despite its major contributions, the Family Code Bill still upholds certain inequalities between men and women. A man still has the right to unilaterally repudiate his wife in specific cases. Furthermore, despite the extensive restrictions introduced regarding polygamy, this practice still exists (whereas Tunisia simply opted to abolish it). Where inheritance is concerned, despite responsibilities being shared between a husband and wife under the Islamic principle of *quiwama* (responsibility for the family), there are certain situations in which a woman may be responsible for the family and yet may only inherit half the share that a man would receive. According to the bill, women are obliged to take responsibility for their family in particular situations, thus ensuring *quiwama*. It would perhaps have been fairer to guarantee them equality with regard to succession rights in such cases, on the basis of a change in circumstances. This was what happened, for example, in the case of the Islamic principle of *quasas* (corporal punishment under criminal law), which has been completely abandoned by Moroccan criminal law.

As far as children's rights are concerned, the text only seems to apply to legitimate children whose parents can be identified and are alive. The bill does not appear to cover abandoned or orphaned children, and no mention is made of adopted children or those in a situation of *kafala*. The Algerian family code, on the other hand, has incorporated the *kafala* of abandoned or orphaned children into its provisions.

Additionally, the *Dahir* of 13th June 2002, which establishes the law as regards *kafala*, allows people who live in Morocco and who are responsible for the *kafala* of a child to leave the country in the company of that child, on the condition that they are authorised to do so by a judge. However, it makes no reference to the international *kafala* of a Moroccan child, and provisions as regards the *kafala* of such children by a Moroccan living abroad are particularly conspicuous by their absence. This situation may be due to the fact that *kafala* has been greatly abused in the past (cases of Moroccan babies

being sold) or to the poor treatment that such children receive.

There are also other limitations to this Code Bill, in relation to how it will be applied both in Morocco and abroad. Moroccan diplomatic assignments in other countries will play an important role in terms of the proper application of this bill's provisions, and the officials involved therein will need to be trained in this area.

The royal decision to submit the Family Code Bill under discussion to Parliament constitutes a great innovation in the history of family law in Morocco. It is thus subject to the normal procedure undergone for the adoption of all laws. This procedure will indisputably help to demystify family law in Morocco. In particular, it will make it possible to clarify the ambiguities of the text and to facilitate the organisation of its implementation. The creation of family courts is in itself a tremendous step forward. These courts will undoubtedly be able to administer justice in a way that takes circumstances into account and that complies with the provisions of the new personal status law.

Conclusion

The advantage of the new Family Code Bill is that it caters for the community of Moroccans in residence abroad and sets out specific provisions for them.

These specific provisions could set an example to be followed by other Moroccan codes that make no reference to the rights of MRA. For example, the electoral code ignored MRA, thus depriving them of the right to vote and, consequently, to participate in the national decision-making process, in contravention of the provisions of the Moroccan Constitution and international conventions.

In this respect, Article 41 of the International Convention on the protection of the rights of all migrant workers and members of their family, which Morocco approved on 21st June 1993, stipulates that:

«1. Migrant workers and the members of their families shall have the right to participate in public affairs of their State of origin, and to vote

and to be elected at elections of that State, in accordance with its legislation.

2. The States concerned shall, as appropriate and in accordance with

their legislation, facilitate the exercise of these rights».

It is therefore necessary to introduce specific provisions for the rights of

MRA with regard to other Moroccan laws, and to enable these people to benefit from their rights as Moroccan citizens.

EURO-MEDITERRANEAN CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION

In response to section C of the MEDA programme adopted in Valencia in April 2002, concerning «cooperation on issues linked to the social integration of immigrants, migration and the traffic of people», the Robert Schuman Centre for Advanced Studies at the European University Institute has created a Euro-Mediterranean Consortium for Applied Research on International Migration, a project financed by the European Commission.

This Consortium is devoted to the observation, analysis and forecasting of migratory movements, their causes and consequences, in both Europe and the countries of the Mediterranean area.

Its objective is to develop a multi-dimension-

al system for continuous monitoring of international migration, accessible to the public; the building up of expertise; and the carrying out of studies and research.

It brings together a network of specialists and institutions from both the North and the South, and establish a Euro-Mediterranean partnership for the monitoring and understanding of migration.

It is aimed at a variety of users: governments of Mediterranean partner countries, governments of European countries, bodies in the countries of emigration, the media, universities and centres of research, civil society organisations, etc.

It is in particular conceived in such a way as to assist the Mediterranean partners in their

efforts to develop and to put into practice migration policies.

In contrast to those already in the field, this Consortium has three original characteristics:

- equal treatment of the North and the South, with an interest in the whole of the migratory process;
- simultaneous coverage of the different facets of migration - demographic and economic, legal, social and political;
- the anchoring in the project in an academic environment, that of the Robert Schuman Centre for Advanced Studies of the European University Institute and its network of partners in the countries of the Euro-Mediterranean region.