



GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GOINEU



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Réception et modalités d'exécution dans les pays tiers des décisions rendues sous l'égide du règlement 2012 (Cas du Maroc)

Mounia EL BAHJA

Notaire à Rabat (Maroc)
Spécialiste du droit international privé notarial

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Le principe de l'exequatur au Maroc

Les articles 430, 431 et 432 du code de procédure civile marocain :

Les décisions de justice rendues par les juridictions étrangères ainsi que les actes passés à l'étranger devant les officiers ou fonctionnaires publics compétents ne sont exécutoires au Maroc qu'après avoir été revêtus de l'exequatur par le tribunal de première instance du domicile ou de la résidence du défendeur ou à défaut, du lieu où l'exécution doit être effectuée. Le tribunal saisi doit s'assurer de la régularité de l'acte et de la compétence de la juridiction étrangère de laquelle il émane. Il vérifie également si aucune stipulation de cette décision ne porte atteinte à l'ordre public marocain.



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L'appréciation du juge lors de l'instruction

Le juge va plutôt faire une appréciation du fond que de la forme



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Appréciation de la forme :

Le juge vérifie et s'assure de :

1. la compétence du tribunal qui a prononcé la décision
2. Ou de l'existence de l'officier public,



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Appréciation du fond :

Le juge vérifie :

1. S'il y a atteinte à l'ordre public marocain.
2. La régularité de la décision ou de l'acte étrangers

I) L'ordre public marocain

En théorie, aucune disposition ne définit expressément la notion de l'ordre public marocain.

En revanche, dans la pratique, cette notion ressort comme motif dès lors qu'il y a refus d'attribuer l'exequatur aux décisions ou actes étrangers.



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IL Y A TROIS PRINCIPALES SITUATIONS QUI ARRIVENT FREQUEMMENT EN MATIÈRE D'EXEQUATUR



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PREMIERE SITUATION

Décision ou acte contraires aux bonnes moeurs (succession d'une personne ayant laissé un conjoint survivant ayant le même sexe).



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DEUXIEME SITUATION

Décision ou acte concernant une personne de nationalité marocaine, et qui est contraire aux lois marocaines. L'exemple le plus courant est l'acte de notoriété rédigé en France et conforme à la loi française d'un marocain est contraire à l'ordre public marocain. Tous les marocains, même porteurs d'autre (s) nationalité (s) demeurent Marocains vis à vis du Maroc.

Il en est de même pour la professio Juris d'un Marocain désignant une autre loi. Son exécution au Maroc est impossible.



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TROISIEME SITUATION

Décision ou acte concernant des personnes, même n'ayant pas la nationalité marocaine, mais de confession musulmane. Le juge vérifie si la charia est respectée, sinon, c'est une atteinte à l'ordre public marocain.



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II) La régularité de la décision ou de l'acte étrangers au Maroc

- le juge vérifie si la décision est définitive (attestation de non appel ou tout autre document justifiant qu'il n'y a plus de recours),
- En ce qui concerne les actes, le juge a toujours un regard sur les dispositions qui y étaient respectées. Ce contrôle se fait par le biais d'un certificat de coutume.



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CONCLUSION

- Les nouveautés du règlement sur les successions internationales de 2012, à savoir : la *professio juris*, l'unicité de la loi pour toute la succession ou le certificat européen successoral peuvent être confrontées aux lois locales qui les empêchent de produire tous leurs effets au Maroc.

EXEMPLES

- 1) la *professio juris* faite par un marocain pour l'application d'une autre loi dont il a la nationalité, ne peut trouver son application au Maroc.
- 2) La succession d'un étranger, de confession musulmane, sera régie par le code de la famille marocain au Maroc, alors même que sa succession soit régie par une autre loi dans un autre pays. (scission de la succession),
- 3) La succession d'un marocain, ayant résidé dans un autres pays avant son décès, sera régie par la loi de ce pays et par la loi marocaine s'il laisse un patrimoine au Maroc.



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Reception and execution modalities of judgement given in the third countries under European regulation of 2012

(Case of Morocco)

Mounia EL BAHJA

Notary in Rabat (Morocco)
Notarial international private law expert

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The exequatur principal in Morocco

The articles 430, 431 et 432 of moroccan civil procédure code :

The judgments handed down by morroccan courts and the notarial deeds signed abroad before a qualified public notaries or public officials can be enforceable in Morocco after exequatur by the first instance court of the place where the defendant is domiciled or of his residence or, failing that, the place where the execution should be done.

The court to which the matter is referred must ensure the regurality of notarial deeds and the jurisdiction of abroad court that gave the judgment. It also examines if any legal stipulation of the judgment violates moroccan public order.



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The judge's appréciation during judicial investigation

The judge appreciates the substance of the case more than the form of the documents submitted



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Form assessment :

The judge ensures and verifies :

1. The court jurisdiction of the judgement
2. Or the existence of the public notary



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Substantive assessment :

The judge verifies :

- 1. If Moroccan public order has been violated.**
- 2. The regularity of foreign decisions or official documents.**

I) Moroccan public order

In theory, there is no provision which defines clearly the concept of the public order in Morocco.

In practice, however, this concept of public order arise as a reason of refusal for exequatur proceeding to foreign judgements and official documents.



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REGARDING EXEQUATUR PROCEEDING, THERE ARE THREE MAIN SITUATIONS THAT HAPPENS FREQUENTLY



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FIRST SITUATION

Judgement or official document which is contrary to moroccan morality (deseased succession who was married with a person of the same sexe).



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SECOND SITUATION

Judgement or official document which concern a person with moroccan nationality, and contrary to the moroccan laws. The most common example is the notarial deed when it's establishing the devolution of the estate of moroccan person in France under french law, this situation is contrary to the moroccan public order. All Moroccans, even when they possess other nationality (ies), they stay moroccan regarding to moroccan laws.

The same applies for the professio Juris when Moroccans choose a law of another country, other than the native law. This choice cannot be executed in Morocco.



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THIRD SITUATION

Judgement or official document which concern people, even they are not moroccan citizens, but they are muslims. The judge controls if the Charia is respected, if not, the moroccan public order is violated.



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II) THE REGULARITY OF FOREIGN DECISIONS OR OFFICIAL DOCUMENTS IN MOROCCO

- The judge insures that foreign decision is final (certificate of non-appeal as well as any other document justifying that there is no other remedy),
- Regarding the foreign official documents, the moroccan judge checks always if the foreign laws have been respected. This control is done through a custom certificate.



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CONCLUSION

- The novelties about the European regulation of international inheritance of 2012, namely : The *professio juris*, the unicity of law to all inheritance or the European inheritance certificate, all these may be faced with the local laws which prevent the full impact in Morocco.

EXAMPLES

- 1) The *professio juris* by moroccan citizen when the choice is made for a different law, not his native one, this choice can not be accepted in Morocco,
- 2) The inheritance of muslim foreign person in Morocco, is governed by moroccan law. (the spin-off of the estate),
- 3) When moroccan citizen has been living out of Morocco, prior to the death, the country of his last residence would apply its own law, but in Morocco, the local laws will be applied as well.



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