

## A study of the Moroccan law on immigration and asylum

Mohammed El Meskin , laabidi abdlaziz , Dr. Kassimi Abdelilah , Dr. rachida nacer

*Sharia, Law and Community Issues, Faculty of Sharia; Sidi Mohammed Ben Abdellah University, Moroccan.  
Email : [med.elmeskine86@gmail.com](mailto:med.elmeskine86@gmail.com)*

This study seeks to highlight the foundations of the Moroccan Immigration and Asylum Law (Law 02-03), which is derived from the spirit of Islamic Sharia, human experience, cultural values, and Moroccan traditions and customs that strike in the depths of history.

On the other hand, it seeks to acknowledge that the rapid historical, technological and economic development today, which led to the abolition of borders between countries and then the development of migration in all its forms.

This situation necessitates Morocco to regulate migration and protect its borders by fighting against clandestine migration flows and human trafficking to ensure its political stability and economic prosperity as well as to remain a country of cross-fertilization of cultures and civilizations, and a place conducive to cohesion and intermingling in an international system, where equality and the values of solidarity and brotherhood prevails, for all these reasons, the Law 02.03 has been passed to specify the manner of entry and residence of foreigners on Moroccan soil.

**Keywords:** Immigration, foreigner, Law 03 02 / Asylum, Nationality.

### Introduction

During the last decades, the international community has witnessed great transformations due to scientific developments, especially in the technological fields and modern means of communication, which have been reflected in the social, political and economic life of many countries. The manifestations of globalization have become as a result of the harassment that contributed to the complication of these relations, and this new reality has had manifold effects, whether at the economic, political or social level, and one of the most important results of this is the expansion of the areas of openness of countries to each other and the escalation of the movement of their citizens outside their borders.

Morocco, bearing in mind its geographical location as the closest point to Europe, is targeted by secret immigration networks, whether through the immigration of citizens of sub-Saharan countries, or the displacement of citizens to other countries; it has become a transit and receiving country for many immigrants, and the Moroccan authorities have been making great efforts to combat

clandestine immigration and dismantle smugglers networks.

Because Morocco is open to various peoples and civilizations, it has found itself at the center of this phenomenon, and from this point of view, it has engaged in the same context as it concluded several bilateral and regional multilateral agreements centered on the general framework of international judicial cooperation in the criminal field, and one of the main features that characterize this type of cooperation is to bypass the problem of the territoriality and sovereignty of the law, considering that the state, in light of its closure within the framework of this principle, will not be able to confront this type of transnational crime, and it will not be able to reach its various parties, nor the means used to commit it by virtue of being distributed between several diameters.

Based on what has been said, the law N 02-03 related to the residence and entry of foreigners to the Kingdom of Morocco and illegal immigration determines the manner of entry and residence of foreigners on Moroccan country in order to establish a general system

that codifies the conditions for entering and residing in the country. It sets legal measures aimed at combating clandestine immigration, and imposing strict injunctive penalties on criminal gangs and networks that operate and trade in human beings who dream of a paradise outside the borders. Then, studying all the legal requirements related to the entry into the residence of foreigners in Morocco will be based on this law, which includes 58 articles regulating the entry and residence of foreigners. These articles also deal with the penalties applicable in case of breaching the requirements related to entry and residence, and the injunctive provisions related to illegal immigration. So, what are the conditions for foreigners to enter Moroccan territory? What are the authorities of the administration in this area? What are the conditions for obtaining residency bonds? What are the considerations that are taken into account according to the law for the delivery of these bonds?

In order to answer these problematic issues, we will address this topic as follows:

## **Chapter one: entry and residence of foreigners.**

All legal requirements related to the entry and stay of foreigners in Morocco were fulfilled by the Dahir of November 15<sup>th</sup>, 1934, which was repealed by Law N. 02.03 related to the entry and stay of foreigners in the Kingdom of Morocco as well as illegal immigration. The implementation of this latter was promulgated by the Dahir No. 03.196 in November 11<sup>th</sup>, 2003.

### **Section one: conditions for entry and residence of foreigners.**

#### **First: Conditions for entry for foreigners**

##### **A- Conditions related to the foreigner**

Every foreigner who aspires to enter Morocco is required to have a Muslim passport from the country to which he belongs, or any travel document recognized by the Moroccan state. Whether it is a passport or a travel document. These two things must respect two basic conditions:

- Its validity exists and useful<sup>1</sup>.
- To be accompanied by the visa issued by a Moroccan consular authority, except if the person concerned belongs to a country whose citizens have been exempted from the visa through an agreement between the two countries.

Upon landing or arriving in the national territory, the foreigner shall submit one of the two documents to the competent authorities in charge of monitoring at the border post.

It should be noted that the foreigner obtaining a visa issued by the embassies and consulates of the Kingdom of Morocco abroad does not preclude the exercise of the authority in charge of control of its authority to refuse entry, if he does not meet the necessary conditions for this, or if the entry constitutes a threat to public order or the alien has been refused to enter.

#### **b- Powers of the specialized authority**

The specialized authorities in the field of entry of foreigners have the following specializations: (Article 4)<sup>2</sup>

- 1- Examination of passports and travel documents in addition to accompanying visas.
- 2- Ensuring that the foreigner has the means that enable him to live for the duration of his stay in Morocco.
- 3- Examining the reasons for the foreigner's coming to Morocco and guarantees of his return to his country after its expiration

In return for these competencies, the specialized authorities in charge of monitoring at the border posts may refuse entry to any foreigner on Moroccan territory in the following cases:

- Failure to respect the procedures related to the passport or travel document and visa.
- Not having the means to live for the duration of the stay
- If there is something in his presence on Moroccan territory that threatens public order,

---

1 From the Dahir related to the civil status of French and foreigners on August 12<sup>th</sup>, 1913

or if he is prohibited from entering it or expelled from it.

As for the possibilities offered to the authorities when making a decision, they can be summed up in two main issues:

1- Implementation of the refusal decision automatically, which is justified by the person's danger to public security in Morocco or his use of clear illegal means in an attempt to enter Moroccan territory.

2- Keeping the foreigner in places not affiliated with the prison administration. The decision to retain the alien, for a period not exceeding 48 hours, should be written and justified, and shall be brought to the knowledge of the King's representative as soon as it is taken.

### **C - Rights of the alien in the area of refusal of entry**

Law 02.03 has conferred on the foreigner some rights that guarantee him to demonstrate his compliance with the procedures regulating entry into Moroccan territory<sup>2</sup>.

- The foreigner shall be informed of his rights, and an interpreter shall be sought for this if necessary.

The alien also has the right to notify the person he intends to go to, the consulate of his country, or a lawyer of his choice.

- The person concerned can appeal the orders issued by the Chief of primary court, or the judge on his behalf because he is a judge of emergency, regarding orders to extend the retention period.

- The decision to refuse entry is required to be written and reasoned.

D- Deportation of the foreigner against whom a decision of refusal of entry was issued.

Article 37 stipulates that the alien must be returned to the point where he began using the means of transport that took him. The company that owns the means of transport, at the request of the specialized authorities in charge of monitoring at the border posts to return it to that point or, when it is impossible to do so, to the country that delivered the travel document

in which he traveled, or to any other country that accepts his entry.

The impossibility of returning the foreigner to the point from which he was moved comes in two cases:

- The company's refusal to transfer that foreigner to the country to which he will go later.
- Refusal by the authorities of the country to which he is directed his entry and return to Morocco.

### **Second: Conditions of residence in Morocco**

The legal residence of an alien in Morocco depends on obtaining residence documents. These bonds are divided according to Law 02.03 into two types: the registration card and the residence card<sup>43</sup>.

#### **A- Registration card:**

The registration card is a license to reside in Moroccan territory for a period between one and ten years. It is renewable for the same period. The registration card is authorized by the administration to the foreigner wishing to reside in Moroccan territory, upon his request, and until it is delivered, a receipt shall be given to the applicant in its place.

The registration card is divided into several types:

- ✓ The type that bears the phrase "visitor" and authorizes the foreigner who proves that he can live with resources, and is committed not to engage in any professional activity in Morocco subject to the license.

- ✓ The type bearing the phrase "student" which is delivered to foreigners who are pursuing education or study in educational institutions in Morocco.

- ✓<sup>4</sup>The last type includes the cards authorized for foreigners who practice professional activities subject to licensing.

#### **B- residence card:**

---

<sup>3</sup>-Ibid

<sup>4</sup>-Moroccan Nationality Law, dated on September 6th, 1958

---

<sup>2</sup> Ibid

1. The foreigner proves his continuous legal residence in Morocco for a period of at least 4 years. In addition to the requirement to prove the period, the foreigner must have good behavior, which is understood from not threatening the public order. The concept of public order, which is one of the reasons that justify the specialized authorities not to authorize residence on Moroccan territory is a general concept, linked to the values of society and its institutions, the customs and traditions prevailing in it, in addition to legislative and legal requirements. Therefore, respect for the public order and not threatening the foreigner is an essential condition for obtaining a residence card<sup>5</sup>.

2. The foreigner proves that he has sufficient means of subsistence for the duration of his stay in Morocco. These means can take the form of possessing qualifications that enable him to practice a professional activity, and his ability to obtain that professional activity, and sufficient means of subsistence can take the foreigner to consult on Moroccan soil. In this regard, the foreigner's occupation of one of the professions needed by the Moroccan economy or with investments is one of the objectives of the economic policy in Morocco, to which the necessary encouragements are provided.

3- The foreigner's justification of the desire to permanently reside in Morocco. Whether or not these justifications are related to social reasons, such as marriage and the family, such as family gathering, taking care of children, economic ones, such as the desire to engage in a professional activity or make investments...etc., or humanitarian reasons for the benefit of certain social groups, or other reasons that cannot be counted, which are up to the matter of appreciation to the relevant authorities.

4- The foreigner is committed to submit a permit to change the place of residence within the legally specified deadlines.

## **Section two: penalties for not respecting the conditions of entry, residence and illegal immigration**

The Moroccan legislator distinguishes between two types of residence in Morocco. On the one hand, there is regular residence, and on the other hand, there is legal residence.

### **First: Regular and legal residence**

Regular residence means the actual residence that is based on the continued presence of the foreigner on Moroccan territory, for the period required by law in order to obtain a residence card or to prevent the foreigner from being subjected to an expulsion procedure so that this indicates the foreigner's intention and desire to settle in Morocco<sup>66</sup>.

Thus, Morocco becomes the usual home of the foreigner, even if the foreigner is absent during periods that may be long or short, for study, trade, etc. This means that the foreigner should not be separated from his regular place of residence.

### **Second: Sticking to the border**

The requirements of sticking to the border, together with expulsion, constitute a form of the compulsory exit of an alien, which Law 02.03 stipulates as a legal procedure ordered by the competent authorities, and taken by reasoned decision, if the reasons for it are met (1). It must also respect a set of Procedures before carrying it out (2).

#### **A- The reasons for taking the decision to stick to the border**

Article 21 of Law 02-03 states the following<sup>7</sup>:

The administration may order people to stick to the border by virtue of a reasoned decision in the following cases:

1- If the foreigner is unable to justify his entry into Morocco in a legal manner, unless his status is later settled after his entry.

<sup>66</sup>The holy Dahir related to the implementation of Law No. 02-03 which is related to the entry and residence of foreigners in the Kingdom of Morocco

<sup>7</sup> Ibid

<sup>5</sup>-The palace magazine, Issue N7 in October 2007

2- If the alien remains inside Morocco for a period exceeding the period of validity of his visa, or upon the expiry of a period of three months starting from the date of his entry into it, if he is not subject to the obligation of a visa, unless he is a holder of a legally delivered registration card.

3- If the alien whose residence document has been refused, renewed, withdrawn, or stayed on Moroccan territory for a period exceeding 15 days starting from the date of his notification of the refusal or withdrawal.

4- If the foreigner does not request his residence document, and remains residing in Morocco for a period exceeding 15 days after the expiry of the validity period of the residence document.

5- If a final judgment is issued against the foreigner due to forgery, or the establishment of a name other than his name, or the lack of a residence document.

6- If the registration card was withdrawn and filled out by the foreigner after it was delivered to him.

7- If the alien's registration or residence card has been withdrawn, or if he refuses to deliver or renew one of these two cards and that in case this withdrawal is issued, or if the refusal is in implementation of the legislative or regulatory provisions in force due to a threat to public order.

#### \* **Illegal entry in Morocco**<sup>8</sup>

The legislator limited the illegal entry to two cases stipulated in Article 21:

✓ If the foreigner could not justify the fact that his entry into Morocco was legal, and his status was not settled after his entry.

✓ If a final court ruling is issued condemning the foreigner for forgery, that is, the use of a forged passport, a forged travel document or a forged travel visa, in order to enter Morocco.

#### **Illegal residence on the national territory**

<sup>8</sup>Ahmed Zokaghi, Provisions of Private International Law in Moroccan Legislation, Nationality, Toubkal Publishing House, Casablanca, 1996.

It can be achieved in the following cases:

- Refusal of the special authorities to grant residency bonds.
- The foreigner whose residence document has expired failed to request renewal within a period of fifteen days from the date of expiry of that validity.
- Issuance of judicial rulings convicting the foreigner of committing the crime of forgery and using it to reside in Morocco, for a forged residence document or under a name other than his name.
- The foreigner has exceeded the period during which he is allowed to reside in Morocco, which is included in the visa handed to him by the Moroccan Consulate. In case the foreigner belongs to a country whose citizens are not subject to a visa, he is in an illegal state of residence if the period of his stay exceeds three months starting from the date of his entry into Morocco.

#### \* **Withdrawal of residence bonds**

Article 19 stipulates two cases in which the residence document is withdrawn:

- If the foreigner does not provide the documents and evidence specified in a legal text. It is required from this clause that the withdrawal is made on the occasion of the renewal of the residence document, because only what has been previously delivered can be withdrawn.

- If the holder of the bond is the subject of a procedure requiring his expulsion, or if a judicial decision is issued against him preventing his entry into Moroccan territory. The expulsion procedure is justified by the serious threat to Moroccan public order by the foreigner, regulated by Article 25 and others. As for the ban on entry, it is an additional judicial penalty that accompanies the decision to take to the border, which is taken against the foreigner who violates the requirements of entry<sup>9</sup> or residence, or it is withdrawn since the residence document that he had because of obtaining that document using illegal methods. Such as submitting evidence that turns out to be false, or submitting documents that

<sup>9</sup> Ibid

have been discovered to be fraudulent by the specialized authorities.

## **B - Procedures for sticking to the border and its implementation**

### **\* Procedures that must be respected by management**

It can be summarized as follows:

- ✓ Informing the foreigner against whom the deportation decision was issued in order to enable him to exercise the right to appeal against it before the administrative court in whose territory he is located.
- ✓ Two days from his notification of that decision, before the President of the Administrative Court as a summary judge. The latter shall broadcast the cancellation request submitted to him within a deadline of four days in a public session and in the presence of the person concerned who is summoned by legal means<sup>10</sup>.

A foreigner can be helped by a lawyer chosen by him, or by a translator, at the request of the President of the Administrative Court.

- If the foreigner requests to cancel the decision to take to the border issued against him, he will be kept in places that are not affiliated with the prison administration in accordance with Article 34 of Law 02-03.

### **Implementation of the Decision to Take to the Border**

Article 28 of Law 02.03 is related to the possibility of automatic execution of the decision to take to the border. It should be noted that the object of appeal is next to the Administrative Court, or that the order issued by the President of the Administrative Court has not been appealed by one of the parties. Moreover, the Moroccan legislator stipulated that it is impossible to implement the deportation decision and expelling of certain segments of foreigners. As a result, the deportation decision can be accompanied by a decision of preventing entry. An independent decision must also be issued to determine the country to which the foreigner will be deported.

---

10 Ahmed El-Shafei, *Foreigners in Morocco*, Dahir on August 12th, 1913 related to the civil status of French and foreigners.

In cases of non-implementation of the carriage to the border, they are related to the situation in which the expulsion of the foreigner may lead to a threat of his life or a damage of his freedom. The following cases are mentioned as an example:

- The foreigner who has been recognized as a political refugee by the foreign country, or the application he submitted to the authorities is still being under study or a decision has not been taken.
- The pregnant woman, taking into account her health conditions, or the effects that may result from her removal.
- A minor foreigner, given that his expulsion may harm to his life or health, or expose him to homelessness.
- A foreigner whose deportation will endanger his life or freedom, or will be subjected to inhuman and cruel treatment.
- More importantly, the Moroccan legislator obliged the department concerned with taking to the border to issue a decision that is independent from the deportation decision, specifying the country to which the foreigner will be returned. According to Article 28, this country is determined in one of the following cases:
  - a. The country of his nationality unless he has been recognized as a refugee, or if his asylum application has not been considered yet.
  - b. The country that delivered a valid travel document.
  - c. Any other country that may be allowed to enter it legally.
  - d. Finally, it must be noted that the law of carriage to the border can be accompanied by a decision of preventing entry to the Moroccan territory for a maximum period of one year. The ban decision must meet the following conditions:
    1. The decision of banning is issued independently of the decision to take to the border, with an explanation of the reason for its issuance.
    2. Enabling the person concerned to have a look at it before its execution, so that he can give his remarks, or refuse it in front of the administrative court.
    3. The ban period should not exceed one year from the date of implementing the carriage to the border. This period reaches ten years according to a court ruling if the foreigner

enters the Moroccan territory without a permit or in the case of recurrence.

### Third: Expulsion

Expulsion is the second procedure that the authorities can do to the foreigner. This procedure differs from the procedure of escorting to the border for the reasons that call for it are generally related to a threat of public order, which is the same reason that establishes the refusal to hand over the residence card.

Law 02.03 provided a list of those whom a decision of expulsion could not be taken towards them unless it was an urgent necessity to preserve public order according to Article 27 of the mentioned law.

#### A- Reasons of Expulsion

The reasons that justify taking the expulsion decision against the foreigner by the authorities can be summarized as follows:

##### Political Reasons:

These reasons are related to situations in which the foreigner contributes to the threatening of political and social stability, or the safety of the internal or external state. An example of this is the fact that this foreigner joins or acts within the framework of an organization that aims at raising political and social obstacles like some terrorist organizations and so on. It can also be pointed out that the concerned authorities fear that foreigners may commit crimes of internal or external state security. It is also possible to resort to the expulsion of the foreigner when he engages in political activities that belong to citizens only<sup>11</sup>.

##### Social and Ethical Reasons.

They are all behaviors that contradict the good morals of the community, and therefore foreigners who engage in prostitution, drug trafficking or other prohibited acts may be subject to a decision of expulsion. The same applies to foreigners who engage in beggary and other acts that may harm the reputation of the state<sup>12</sup>.

##### Health reasons

It concerns cases in which a foreigner is infected with epidemic or contagious diseases that threaten the health safety of citizens, except if those diseases are such that only multiply workers and prevent them from carrying out their work and professional activities. This is not a reason to take the decision to expel, given the lack of the element of risk in it.

In this context, it is noted that the administrative judiciary has been discussing the health reasons approved by the expulsion decisions taken by the administration after it had exercised limited control at this level. The administration refused to justify the physical presence of the reasons mentioned in the expulsion decision, as it decided the following:

"Any administrative decision must be based on a justified reason, and this reason is the legal or factual situation that justifies the administration's intervention to sign (...) the judiciary extends to the validity of the facts that are the cornerstone of the reason and to the legal qualification of those facts<sup>13</sup>."

#### b- Persons against whom an expulsion decision cannot be taken

This applies to the following types of foreigners:

- A foreigner who has been habitually residing in Morocco for a period of more than 15 years, or who has resided on the national territory since the age of six.
- The foreigner who has legal residence for ten years, unless he belongs to the category of students, then the period must reach fifteen years. If he does not belong to the category of students, he must not have been subjected to a prison sentence of less than one year.
- The foreigner who has had a marital relationship with a Moroccan citizen for at least one year, or who is the father or mother of a child residing in Moroccan, and who has acquired Moroccan nationality by law in accordance with Chapter 9 of the Nationality

---

13- Saadia Belmir, Family Ties in Moroccan Private International Law, Publications of the Association for the Development of Research and Judicial Studies at the Ministry of Justice

---

<sup>11</sup>- Ibid.

<sup>12</sup>- Ibid.

Law, provided that he has the legal representative for the child, and that he is a guarantor actually alimony<sup>14</sup>.

A minor foreigner and a pregnant foreign woman.

### **injunctive measures**

Law 02.03 deals with how to monitor immigration processes to and from Morocco, and doubles the penalty applied to clandestine immigrants who enter or leave Morocco illegally using forged documents or fraudulent means. 3,000 dirhams to 10,000 dirhams (Article 50), as well as a punishment for every public official who provides assistance to immigrants secretly ranging from two to five years, and a fine between 50,000 dirhams to 500,000 dirhams (Article 51). It also stipulates the criminalization of organized criminal networks for clandestine immigration.

Thus, the Moroccan legislator, through Law No. 02.03, criminalizes illegal immigration, aiding and regulating it. Articles 50, 51 and 52 of it punish with imprisonment and financial penalties every person who leaves Moroccan soil secretly, or provides assistance or aid to another person for the same purpose. Whether this person undertakes the task of commanding a public force, or belongs to it, or is entrusted with the task of monitoring, or whether he is an official, agent, or employee working in land, sea, or air transport, or in any other means of transport, whatever the purpose of using these means, as Article 52 of the same law punishes with imprisonment and a fine any person who organizes or facilitates the secret entry of Moroccans or foreigners into or out of Moroccan territory by one of the above-mentioned means, whether free or in return. Rather, the penalty is imprisonment and a fine if these acts are committed habitually or by a gang or based on a prior agreement, and the penalty is up to life imprisonment if these acts lead to death. The Article 53 of the same law authorizes the court to confiscate the means of transportation used. In the commission of secret immigration crimes of any kind (public

or private), as well as the order to publish conviction decisions in the newspapers that specify it in an explicit manner.

Within the framework of jurisdiction, the Moroccan legislator has given the Kingdom's courts the right to consider any crime stipulated in this law, regardless of where it was committed in the country or abroad, and regardless of the nationality of its perpetrators. From Law No. 02-03 on November 11<sup>th</sup>, 2003.

## **Chapter two: the civil status of foreigners**

### **Section one: rules related to marriage and divorce.**

Foreigners do not enjoy political rights, so that they cannot belong to the category of voters and elected in the bodies subject to the selection of their members for election, whether it is local, regional, or national bodies. The same applies to public jobs, and in return they exercise some rights, whether it is related to family rights, property, having a job or any economic or professional activity<sup>15</sup>.

#### **First, the rules related to marriage**

Marriage is generally defined as a legal association between a man and a woman on the basis of their consent, according to the conditions stipulated by the law.

Detailing the legal requirements relating to foreigners requires addressing the following:

#### 1- Marriage between foreigners in Morocco.

The marriage of foreigners in Morocco is subject to essential and formal conditions:

##### A- Basic terms and conditions.

In line with Chapter Three of the Dahir that was issued on August 12<sup>th</sup>, 1913 related to the civil status of French and foreigners in Morocco, which indicates that the personal and civil status of foreigners are subject to their national law, Chapter Eight of the same Dahir

14- Saeed Youssef Al-Bustani, The Legal Center for Foreigners in the Arab Countries, A Comparative Study, Al-Halabi Human Rights Publications, Beirut 2004

15The holy Dahir regarding the convening of marriages between Moroccan women and foreigners, or Moroccans and foreign women on March 4, 1960

stipulates the following: The conditions are mostly related to physical and mental competence and satisfaction free from defects and impediments resulting from kinship or from a previous marriage, or any other reason. The national law is applied to both spouses when both spouses have two different nationalities, but if the spouses belong to the same nationality for personal status, the marriage is subject to one law.

#### **b- Conditions and superficial rules**

These conditions relate to the special requirements of the form of the conclusion of marriage and the procedures that must be followed by the spouses in order for their marriage to be valid in the eyes of Moroccan law. In this regard, the Moroccan legislator stipulates in Chapter 11 of the Dahir in August 12<sup>th</sup>, 1912: French people and foreigners can not marry in Morocco unless they agree about the rules accepted in their national law, or according to the rules stipulated in the civil status system. Therefore, the procedures according to which foreigners can take place in Morocco are either:

\* The procedures stipulated in the national law of the spouses, if they are of the same nationality, they may marry with the consul of their country, but if they are of two different nationalities, their national law must be applied together.

\* Procedures for the marriage of foreigners in local law or Moroccan law. The task of concluding the marriage of foreigners is entrusted to the civil status officer. However, this is not mandatory unless required by national law for the foreign husband and wife, which can leave them to choose the religious form, or the civil form.

Whether the case is related to foreigners or Muslims, they are subject to the necessity of obtaining permission to marry, as stipulated in Article 65 within the Family Code, and according to the circular of the Ministry of Justice on converts to Islam on May 17<sup>th</sup>, 1979, the permission to marry is issued by the King's Public Prosecutor at the Court of Appeal, which exists if there are no impediments to marriage for the wife and husband, so that the contract conforms to the rules of Islamic jurisprudence, and does not

contradict the public order established in his country of origin.

#### **1- Mixed Marriages:**

Mixed marriages require a Moroccan party. It is organized by the Decree of March the 4<sup>th</sup>, 1960 concerning the marriages between Moroccans and foreigners<sup>16</sup>. According to this decree, mixed marriages are allowed in condition that they are not prohibited from the Code of Personal Status that is applied on the Moroccan husband, i.e., from the current Family Code. Article 39 stipulates that Muslim and non-Muslim marriages cannot be taken place unless the non-Muslim party is from the people of the book, and Hebrew marriages when one of the spouses is a Moroccan Jew are subject to the rules of the Jewish Shariah, which prohibits a male or female Jew from marrying only a person of his or her religion.

In terms of form, the mixed marriage according to the Dahir of March 4<sup>th</sup>, 1960 is concluded by the civil status officer, and it can only take place after the conclusion of that marriage according to the conditions set forth in the Family Code. The Ministry of Justice's publication No. 929 of 08/04/1982 concerning the marriage of Muslim foreigners to Moroccan women required the Muslim foreigner to obtain a certificate of competence in marriage to his country's embassy or consulate. However, the need to protect the Moroccan husband, especially Moroccan women, and to prevent harm to Moroccan public order prompted the Ministry of Justice to issue a publication No. 6/95 of 16 July 1995. This publication requires the permission to marry handed over by the King's Procurator-General to the Court of Appeal, in all cases where the party to the contract is foreign whether it is intended to be concluded into or intended to prove its legitimate intention<sup>17</sup>.

#### **2- Financial relationship between spouses:**

---

16-The palace Magazine, Issue 6, September 2003.

17 -Dahir regarding the implementation of Law No. 70-03 relating to economic experts of June 22, 2001.

In most legislation, the financial relations between the spouses include two types of rules:

### **The legal system**

Chapter 15 provides that if an orderly contract of financial relations between the spouses is not justified, the effects of marriage on the property of the spouses are regulated by the national law of marriage at the time of the emergence of matrimonial relations, and the nationality of the spouses or one of them does not affect the status of their property, as it is the change of the national law of the husband. It is the national law which, at the time of the marriage, regulates the financial relations between the spouses<sup>18</sup>.

### **The contractual system**

Chapter 12 of the Dahir of August 12nd 1913 provides that a contract regulating the financial relations between the spouses is valid in form if it is concluded in accordance with the national law of the spouses, or when it is not in accordance with the formal rules of French law, so if the spouses belong to one nationality, their national law is applied to the level of the contract formalities, and when the two spouses are of different nationalities, and a form permitted by their respective laws must be used. That contract must therefore be entered into by a specific Moroccan notary under the May, 4th 1995 Dahir.

### **Second: Rules on divorce.**

According to chapter 9 of Dahir August 12th 1913, French and foreign nationals are entitled to seek divorce under the terms proposed by their national laws, and to be able to refer to this subject, the fundamental and formal requirements must be analyzed as well as the consequences and causes of divorce need to be discussed<sup>19</sup>.

### **1 – The essential conditions or rules of divorce:**

Divorce is the dissolution of a valid marriage and the dissolution of the marital pact. The

---

18- Salih Al-Hamoun, *Foreigners' Rights in Iraqi Law*, Dar Al-Wefaq, 1981.

<sup>19</sup> -Ahmed Zokaghi, *The Status and Eligibility of Foreigners in Moroccan Legislation*, Curricula, Double Number, 3-4 2003

basic rules of divorce provide knowledge of the application for divorce and its causes.

### **A- Application for divorce**

Asking for divorce is a right that belongs to the spouses according to the conditions of their national law in force on the day the lawsuit is initiated, and it is not permissible unless the national law permits the student, who can stipulate the passage of a certain period, or does not allow divorce in a religiously contracted marriage then those rules must be respected. The issue of divorce that takes place in connection with the marriage of a foreigner Muslim, with a Muslim woman, is raised with a notary certificate (after the permission of the court) this divorce cannot be registered in the civil status at the foreign consulate if the national law of the Muslim husband requires the issuance of a court ruling, as the husband must file a civil case in order to issue a ruling authorizing the divorce<sup>20</sup>.

### **B- Reasons that justify divorce:**

The national law of the claimant is the one that determines the reasons of divorce, even if the national law of the other part does not acknowledge the reasons behind the prosecution, the reasons behind divorce differ as much as legislations and laws do.

### **2- Forms of divorce conditions and rules:**

Divorce takes two forms:

- The form of judicial testimony which is based on the permission of the court according to article number 49 from the family code.
- The form of divorce based on judgment which is based on judgment issued by the court specialized in untangling the marital relationship and deciding its legal consequences.

### **A - The issue of the specialized court**

The Moroccan judicial view of the Christian religious courts that were specialized in deciding - in the era of protection - in cases of

---

20-Amer Al-Mustafa Dahir on December 8<sup>th</sup> 1913 Concerning the Situation of Foreigners and the Concept of Public Order, Judicial Supplement No. 12-13, 1984

marriage nullity and corporal separation developed in laws that did not allow civil divorce (Spain and Italy, for example) The courts used to rule that they did not have jurisdiction to decide requests for annulment of marriage, or for corporal separation, on the grounds that this is within the jurisdiction of religious courts. (Judgment issued in the Casablanca Court on September 14, 1948 and January 8, 1950, for example).

### **B- The applicable procedure**

The procedure to be followed in a divorce suit is what is included in the Civil Procedure Code in divorce, and the court studies the divorce cases in the counseling room, as it orders its registration in the civil status records of the place of marriage, or in the civil status records of the last place where the spouses resided in Morocco if the marriage took place in accordance with the legal form, or the consulate, or it was concluded abroad.

The second requirement: foreigners and Moroccan nationality.

The Moroccan Nationality Law distinguishes between the original nationality, which is granted from birth, and the acquired nationality, which is granted to a person after a period of time has passed since his birth.

### **First: Attribution of Moroccan nationality as the original nationality**

The Moroccan Nationality Law is attributed as an original nationality, either in view of the existence of a kinship bond (blood bond), or in view of the birth on Moroccan soil, if certain conditions are met (the territorial bond).

### **A- Basing the Moroccan nationality on the basis of descent:**

The Moroccan legislator stipulated in Chapter VI of the Nationality Decree on two cases in which Moroccan nationality is attributed by descent.

- The first relates to the child descended from a Moroccan father.
- The second concerns the child of a Moroccan mother and an unknown father.

### **B- Attribution of Moroccan nationality through the territorial association**

This requires birth on Moroccan soil; in addition to this, two conditions must be fulfilled.

- The child must be descended from a Moroccan mother and a stateless father
- Or that the child is descended from unknown parents<sup>21</sup>.

### **Second: Attribution of Moroccan nationality as an acquired nationality.**

The Moroccan legislator provides three methods of acquiring citizenship: acquiring by law, acquiring by naturalization, and acquiring by restitution.

#### **1- Acquisition of citizenship by law**

The phrase “by law” does not mean the automatic acquisition of Moroccan nationality in the cases stipulated by the Moroccan legislature and without the concerned person expressing his consent to this. Rather, the Minister of Justice has the right to refuse the acquisition of Moroccan nationality by a person who does not have Moroccan nationality as an original one. The decision of the Minister of Justice in this regard is not subject to any oversight, but the silence of the Minister of Justice in this regard is tantamount to approval of the acquisition of Moroccan nationality; Moroccan nationality is acquired by law, by birth and residence in Morocco and by marriage.

#### **Acquisition of citizenship by birth and residence in Morocco.**

According to Chapter 9 there are three cases:

- The child born in Morocco from a Moroccan mother and a foreign father, provided that his residence in Morocco when he makes the declaration is in regular.
- The child born in Morocco of two foreign parents who were both born in Morocco after the implementation of this law.
- The child born in Morocco from a foreign father who was also born in Morocco; in condition that the father belongs to a country

<sup>21</sup>Moroccan Nationality Law on September 6th, 1958

where the majority of its population consists of a group whose language is Arabic or whose religion is Islam.

### **Acquisition of Moroccan citizenship through marriage**

This requires the fulfillment of four conditions:

- That a foreign woman marries a Moroccan
- the family residence in Morocco should be constant and regular for at least two years
- Submitting a permit to the Minister of Justice after two years of marriage, while the family continues to reside in Morocco.
- No objection from the Minister of Justice to that within the six-month period following the date of depositing the permit.

### **Acquisition of citizenship through naturalization**

Naturalization is the authorization of Moroccan nationality by the competent authority to a foreign person, who has fulfilled the legally established conditions. Prior to the issuance of the Nationality Law, it was not envisaged to acquire Moroccan nationality through naturalization, due to the absence of a legal text. Therefore, for the acquisition of nationality through naturalization, a set of essential and formal conditions must be met:

#### **Fundamental conditions:**

- To be residing in Morocco at the time of signing the naturalization document.
- To prove that the foreigner's residence in Morocco was legal and regular during the five years preceding his application for naturalization.
- To be of legal majority.
- To have a healthy body and mind.
- To be of a good reputation and behavior.
- To have sufficient means of subsistence.
- To prove sufficient knowledge of the Arabic language.

#### **Formal conditions:**

- Submitting an application to the Minister of Justice that includes documents proving that he meets the conditions mentioned above.

- Obtaining a naturalization document issued by a decree of the Council of Ministers, and published in the Official Gazette.

#### **Effects of naturalization**

Naturalization differs in terms of its effects from other methods of acquiring Moroccan nationality, as naturalized people are subject to two basic restrictions during the five years following the issuance of the naturalization document.

**First constraint:** It is that a naturalized person cannot be assigned a public office, or an electoral representative, in which the acquisition of Moroccan nationality is required.

**Second constraint:** It is that he cannot be a voter if Moroccan nationality is a condition of registration in the electoral lists.

#### **2- Acquisition of Moroccan nationality through restoration:**

General legal principles relating to nationality recognize that a person who loses his nationality for any reason has the right to regain it, if he later wishes to do so. In the same direction, Chapter 15 of the Moroccan Nationality Law stipulates that it is possible to authorize the restoration of nationality by decree for every person who had it as an original nationality when he requests so. In this regard, the requirements set in Article 14 of this Law shall be applied in the matter of regaining citizenship.

#### **Individual and collective effects of restoration:**

The individual effects are that the person concerned recovers his Moroccan nationality and becomes a Moroccan, enjoying all rights and subject to all duties as such. And that since the date of publication of the retrieval decree. Therefore, the applicant does not have the eligibility restrictions imposed on the naturalized person.

In terms of their collective impact:

- Minor children who acquire citizenship by acquisition if they were born during the period

when their father or mother did not hold Moroccan citizenship (because Article 18 does not specify whether the matter is related to the father or the mother), and they acquire the original nationality if they were born before their father lost the Moroccan nationality.

- That effect occurs by virtue of the law, whether the child had Moroccan nationality before it or not.

- It is final for children, and they cannot give it up, as it is the case for minor children who were at least 6 years old on the date of their naturalization, and who may give up their Moroccan nationality between the eighteenth and twenty-first years of their age.

### Conclusion:

It seems that the repercussions of the economic crisis will have an impact on the sensitive issue of immigration and that the integration measures may generate a kind of tension and widen the gap between the African diaspora and the native communities. This can be due to the racial discrimination, be it figurative or real, that Europe and Western countries raise towards the youth of the southern countries. This may reflect negatively on “the limits of tolerance,” and widen the gap of “hidden racism,” which arose from ignorance and poverty. Thus, the problem here is people’s awareness, and not just an issue of law and legislation.

In addition, this incentive policy may have a “polarizing” and stimulating effect on new waves of migration coming from sub-Saharan. Do we really have a policy for integrating migrants to face all the challenges that are related to people’s movement?

Nowadays, we are in dire need to launch a national legal and ethical project for inclusion/integration, which will revolve around a culture of “accepting the other”. This can be reinforced by a demand from some political parties and civil society organizations to come up with a law that criminalizes racism in all its forms, regardless of who is responsible for the racist behaviors, whether state agencies or citizens.

### References

- [1] Ahmed Zokaghi, “Provisions of Private International Law in Moroccan Legislation: Nationality,” Toubkal Publishing House, Casablanca, 1996
- [2] Saadia Belmir, *Family Ties in Moroccan Private International Law*, Publications of the Association for the Development of Judicial Research and Studies, Ministry of Justice, 1988.
- [3] Moussa Abboud, “The Brief in Moroccan Private International Law”, Arab Cultural Center, Casablanca, 1994

### Legal texts:

- [1] Dahir on the civil status of France and foreigners on August 12<sup>th</sup>, 1913
- [2] Moroccan Nationality Law on September 6<sup>th</sup>, 1958.
- [3] The holy Dahir regarding the conclusion of marriage between Moroccan women and foreigners, or Moroccans and foreign women on March 4, 1960.
- [4] Dahir regarding the implementation of Law No. 02-03 related to the entry and residence of foreigners in the Kingdom of Morocco and illegal immigration, 2003

### Articles

- [1] Ahmed Zokaghi, “The Status and Eligibility of Foreigners in Moroccan Legislation,” *Curricula*, Double No. 3 and 4, 2003

### Conferences and seminars

- [1] A national symposium on : "Morocco and issues of migration and asylum" - Bets and organized approaches on Tuesday 6<sup>th</sup> and Wednesday 7 May 2014 at the Faculty of Law of Meknes.
- [2] Abdel Moneim Floss, *Lectures in Private International Law*, Faculty of Law, Souissi, Rabat, 2013.
- [3] Rachid Khalil, “Regulatory requirements for the entry and residence of foreigners in the Kingdom and illegal immigration (Proceedings of the national symposium organized by the Ministry of Justice and the Ministry of the Interior in Marrakesh on December 19 and 20 2003), Rabat, Fadala Press, 2004 AD.
- [4] Moroccan Association of Human Rights, *guide on the rights of migrants, refugees*

and asylum seekers in Morocco ISBN:  
978 -9954 -591 -13 -0, printing rabat net  
2014.

[5]