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MOROCCAN MIGRATION LAW IN STORM

RÉSUMÉ

Si le Maroc est longtemps demeuré un pays d'émigration, marqué par une faible présence de résidents étrangers permanents, il semble qu'une nouvelle politique d'immigration et d'asile soit aujourd'hui en ordre de marche. La ratification de la Convention des Nations Unies sur la protection des droits des travailleurs migrants en 1993, l'adoption de la Loi 02-03 relative à l'entrée et au séjour des étrangers au Maroc en 2003 ou encore l'adhésion au Pacte de Marrakech sur les migrations de 2018, ont progressivement transformé la politique marocaine de migration. Désormais engagé pour la reconnaissance de l'égalité de droits en faveur des travailleurs migrants et l'affirmation de leurs droits fondamentaux, le pays offre des mesures protectrices aux immigrés, tout en respectant les objectifs sécuritaires de l'Union Européenne.

MOTS CLÉS: *Migration collective, migration individuelle, droit des migrants, politique commune.*

ABSTRACT

If Morocco has long remained a country of emigration, marked by a small presence of permanent foreign residents, it seems that a new immigration and asylum politics is now in working order. The ratification of the United Nations Convention on the protection of the rights of migrant workers in 1993, the adoption of the Law 02-03 on the entry and residence of foreigners in Morocco in 2003 and the accession to the Pact of Marrakech on migration in 2018, have gradually transformed the Moroccan migration politics. Now committed to the recognition of equal rights for migrant workers and the affirmation of their fundamental rights, the country offers protective measures to immigrants, while respecting the security objectives of the European Union.

KEYWORDS: *Collective Migration, Individual Migration, Migrant Law, Common Politics.*

For a long time, Moroccans' mobility for work was minimal and rather temporary. Under the Protectorate, a large part of the rural population in the east of the country regularly travelled to farms in Algeria, while labour migration primarily from the south provided the necessary support for a fluctuating labour market in mainland France. It was mainly *via* the labour conventions concluded in the aftermath of Algeria's independence that France and other European countries established a more stable immigration policy. The bilateral agreements concluded in the 1960s and the social security agreements that followed created favourable conditions for the selection, transfer and settlement of migrants, by assuring them that they would share equal rights at work and equal social protection with nationals. Collective migration to France, Germany, Belgium and the Netherlands totalled 300,000 persons in 1974 thanks to these incentive measures and to the opening of recruitment services in Morocco attached to the administrations of these countries.

The reversal of the situation after the first oil shock put an end to collective migration. Individual migration, however, has continued in various ways. The restrictions on the mobility of foreigners, and their extension as a result of the Schengen Agreements, have failed to stop it. They may have even had the opposite effect, convincing those who still entertained the idea that they might still return after retirement to fully exercise their citizenship rights, reunite their families, and obtain access to the territory and the full enjoyment of social benefits for them¹. Illegal immigration has itself given rise to the frequent legalization of workers engaged in professional activity.

This development has had the effect of freezing the application of measures for the selection and transfer of emigrants. Other provisions of the agreements have become obsolete due to migrants' access to equal treatment and citizenship rights. Moroccan emigration law has long been based on agreements. Its institutional dimension was consolidated in 1990 with the creation of a Department and a Foundation in charge of Moroccans Living Abroad (MRE). According to some estimates, their number now stands at 5 million², 45% of whom are binational, thus reinforcing the feeling that Morocco remains a country of emigration (II).

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- 1 R. Filali Meknassi, O. Sidibé and A. Supiot, Interview about French immigration policy, *Revue Travail et Emploi*: https://www.college-de-france.fr/media/alainsupiot/UPL2766899583730903115_2007_Sidibe_Filali_AS_Entretien_sur_la_politique_franc_aise_d_immigration.pdf
 - 2 <https://www.iom.int/fr/countries/morocco>

This feeling is reflected in the low numbers of permanent foreign residents in the national territory. Under the Protectorate regime, which only lasted about 40 years, the European population, which predominantly resided in the cities, numbered little more than 80,000. Not only did many foreigners depart in the aftermath of independence, the «Moroccanization» of the economy in 1975 further reduced their numbers. Despite the country's economic opening in the 1990s, today a mere 22,000 foreign workers are registered with the National Social Security Fund. The law governing their conditions of employment and social welfare protections mainly consists of provisions of the Labour Code that reuse the measures introduced in the 1930s and 1940s concerning prior authorization for the employment of foreigners.

Two major events, however, have disrupted this apparent stagnation of Moroccan migration law, at least formally. The first of these was Morocco's ratification of the United Nations Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, which reaffirmed their fundamental rights, and the second was the adoption of law 02-03 on entry and residence of foreigners in the Kingdom of Morocco, unlawful emigration and immigration³.

In the context of European restrictions of migrant rights, Morocco has been among the southern countries that have advocated at the UN for the recognition of equal rights for migrant workers and for their basic rights to be upheld, even when they lack legal status due to new laws. It was the second nation to ratify this UN Convention, and one of the first to submit an initial report on its implementation after its entry into force in 2013. Law 02-03 is of very different inspiration, and almost identically replicates the measures adopted by many European countries for cross-border movement control since jurisdiction over migration matters was transferred to the European Union. It gives the supervisory authorities of the General Directorate for National Security extensive powers relating to the admission, residence and work of foreigners in Morocco. By the discretionary exercise of those powers, those authorities can class foreigners' presence in Morocco as lawful or unlawful, and may authorize the application of security measures: detention, removal, deportation, criminal prosecution, etc. Even though the United Nations Convention has specifically defined their scope, the rights of immigrants tend to be defined by this exercise of discretionary power where the law does not make specific provisions in this regard **(II)**.

I - THE LEGAL STATUS OF MOROCCAN MIGRANTS

Bilateral labour agreements are the main source of Moroccan emigration law **(A)**. The content of these agreements has become obsolete in terms of measures regulating collective emigration, except in regard to seasonal workers **(B)**. These agreements were followed by social security treaties permitting the portability of entitlements **(C)**. More recent agreements apply to selective individual emigration **(D)**.

3 Promulgated by the Dahir of 11 November 2003, *Official Gazette*, no. 5162 of 20 November 2003. See also the primary implementing text, the Decree of 1 April 2010, *Official Bulletin*, 6 May 2010, p. 1326.

A - BILATERAL LABOUR AGREEMENTS

The Federal Republic of Germany was the first country to conclude a labour agreement with Morocco⁴. The agreement signed with France⁵ a few months later left the door open to continued migratory flows, as managed by the National Office of Immigration since 1945. The content of that agreement inspired the agreements subsequently concluded with Belgium in 1964⁶ and the Netherlands in 1969. Subsequent agreements with Spain (2001) and Italy (2005) reproduced similar measures, without providing for the selection and sending of workers.

These tacitly renewable agreements commit the parties to simplifying the administrative formalities for departure from Morocco, entry into the host country, issuance of residence and work permits, and reducing the related costs. They allow the hiring both of named individuals and anonymous workers. In any case, the exercise of professional activity remains entirely dependent upon the conclusion of an employment contract approved by the labour authority in the country of employment. They stipulate, occasionally in an annex, the procedures for the selection of candidates and the payment of travel and training expenses.

The basic principle applied is equality of treatment between migrant workers and national workers in the country of employment in terms of working conditions, remuneration and housing. The right to unemployment benefits and the right to transfer income are guaranteed. It is also stipulated that if the worker is not hired or if the employment contract is terminated, measures will be taken by the competent administrative services to assist with the worker's occupational integration under similar conditions. Family entry and settlement are also permitted. The Agreement entered with France states that «the families of Moroccan workers may join them, and the French Government will make every effort to facilitate this in the context of the legislation and regulations currently in force»⁷.

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- 4 The FRG had previously concluded industrial labour agreements with Italy (1955), Spain (1960) and Turkey (1961), in accordance with a rotation model preventing durable settlement. It was not until 1970 that foreigners were allowed to be joined by their wives and children; hence the weak presence of the Moroccan community in Germany. The Agreement with Morocco was concluded on 21 May 1963.
 - 5 Labour Agreement of 1 June 1963 between France and Morocco, enacted in France by Decree no. 63/779 of 27 July 1963 promulgating the Labour Agreement of 1 June 1963 between France and Morocco.
 - 6 The Agreement entered with Belgium was not published until 17 June 1977, at the same time as other bilateral agreements, probably to avoid demands that its content be brought into alignment with the more favourable agreements concluded with other countries, including Turkey.
 - 7 See Art. 11 of the Franco-Moroccan Agreement. The Agreement signed with Belgium the following year was followed by the 1965 adoption of regulations providing that half of the traveling expenses of the worker's wife and children would be reimbursed if the family had at least three minor children. The Ministry for Employment and Labour issued a brochure encouraging the entry and settlement of families, entitled: «Living and working in Belgium». To attract miners, its annex claimed that workers would be provided «with suitable housing and food compliant (...) with their customary diet».

Employers are also given recommendations as to how to permit migrant workers to enjoy official Moroccan holidays or non-working days. A joint commission was also established to monitor the implementation of the Agreement, propose revisions if necessary, and iron out any difficulties encountered in its application.

B - THE LAW APPLICABLE TO TEMPORARY MIGRATION

Seasonal agricultural migration by Moroccans is nothing new. Highly developed under the Protectorate between the east of the country and the farms of Algeria, it also experienced something of a boom in southern France thanks to what are still known as «OMI» contracts despite the changes that public institution has undergone⁸. The enlargement of the European Union reduced its visibility as Spanish, Portuguese and Yugoslav workers that had previously enlarged the migration statistics were no longer considered foreigners. Between 10,000 and 15,000 North African seasonal workers make the trip each year to bring in the harvest in the greenhouses and orchards of southern France.

For Moroccans and Tunisians, the length of their stay must be no less than 4 months and no more than 6 months, except where shorter periods are granted by waiver if the employer commits to bear the cost for the worker's return, making an additional 2 months⁹.

Contracts made through the National Agency for the Reception of Foreigners and Migration (hereinafter the «ANAEM») entitle workers to a temporary residence permit (CST) with a maximum duration of three years, which may be renewed. The right of residence in France is limited to the set period, and cannot exceed six months per year; the worker must undertake to maintain his or her residence outside of France¹⁰. Upon their return, workers are required to report to the OFI office in Casablanca. Starting this year, however, the office has now stopped covering this return trip. The Spanish-Moroccan agreement took its inspiration from this arrangement, while also taking advantage of the support measures put in place by the European Union. It was only made public 6 years after its conclusion¹¹.

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- 8 Until 1988, the National Immigration Office (ONI) was known as the Office of International Migration (OMI). In 1945 it was assigned sole authority for the recruitment, transportation and placement of foreign workers in France. Funded by «one-time fees» paid by employers upon their signature of each employment contract, in 2005 it was renamed the «National Agency for the Reception of Foreigners and Migration» (ANAEM), then in 2009 the «French Office for Immigration and integration» (OFI). Now placed under the supervision of the Ministry of Migration, rather than the Ministry for Labour, it no longer has exclusive authority for the hiring of migrants. See A. Morice, «Quelques repères sur les contrats OMI et ANAEM», in *Travailleurs saisonniers dans l'agriculture européenne, Etudes Rurales*, no. 182, 2008; Decree no. 2009-331 of 25 March 2009: <http://www.ofii.fr/qui-sommes-nous>
 - 9 A. Morice and B. Michalon, «Les migrants dans l'agriculture: vers une crise de main-d'œuvre?», *Etudes Rurales*, no. 182, 2008, p. 9.
 - 10 In 2016 Morocco accounted for 15% of the total seasonal migrants arriving in EU territories, second only to Albania.
 - 11 The signature of this Agreement followed the adoption of a law on migration in 2000 that allowed for an extensive legalization of immigrants. But following a change of majority, a more restrictive migration policy was put in place, giving preference to the conclusion of labour agreements with Morocco (2001). See: https://www.fidh.org/IMG/pdf/rapport_fraises_fr.pdf

Its Article 19 (2), however, provided for its provisional application 30 days from its signature date¹². As a result, it has served since 2004 as a basis for the design and implementation of the seasonal migration Master Plan established with the municipality of Huelva. Compared to previous labour agreements, the novelty of this agreement lies in its inclusion of a legal status especially for seasonal migrants, without however really addressing the specifics. The conditions for its implementation are essentially determined by arrangements between the administrations concerned.

The Agreement uses new terminology for the regulation of «the flow of labour between the two countries in an orderly and coordinated manner». Its scope of application includes only «Moroccan citizens authorized to engage in gainful activity on behalf of a third party in Spanish territory». The Spanish Embassy in Rabat is responsible for notifying Moroccan authorities of the labour requirements provided by Spanish employers or their representatives. By the same channels, the Moroccan authorities then send back the available capacity for satisfying those requirements.

Offers may consist of named or anonymous individuals. Spanish employers retain their recruits by repeatedly employing them and arranging residence and work permits for them without going through the collective procedure¹³. The agreement also stipulates that a Joint Selection Committee is to be established. This committee is responsible for «selecting workers whose professional profile corresponds to the existing job offers, organizing the necessary initial training courses, and advising and assisting workers throughout the recruitment process. The employer or its representative may also participate in this Committee».

After passing a medical examination, the selected workers sign their employment contracts and receive their tickets for the outward trip; they are expected to pay the return portion of the ticket. A temporary or residence visa will then be issued by consular services as soon as possible; the stamp placed on the passport will indicate the purpose and authorized duration of their stay. This takes the place of a work permit whenever this duration is less than 6 months.

Moroccan authorities facilitate the selection, training and departure operations. In addition to a copy of their contract, the persons selected also receive a written document providing information relating to their legal residence, employment, housing and remuneration. The Spanish authorities in turn provide permits for their employment and temporary residence.

12 Published by virtue of the Dahir issued 17 April 2007 in official gazette no. 5532 of 7 June 2007, this agreement was entered between the Prime Minister of Morocco and the Head of the Spanish Government on 25 July 2001. Article 2 designates the Ministry for Labour as the competent authority on the Moroccan side, and the Ministries for Foreign Affairs, the Interior and Labour on the Spanish side, within the framework of their respective jurisdictions in the immigration domain.

13 The workers thus retained are referred to as «repeaters» (repeticiones) in Spain. Article 13 states that «applications for annual and renewable residence and work permits submitted by Moroccan nationals who have been employed as seasonal workers in Spain for four years, consecutive or otherwise, will be reviewed with particular benevolence by Spain».

The Agreement provides for the equal exercise of the labour rights conferred by Spanish legislation and collective agreements. Transfers of income are conducted in compliance with the legislation on exchange rates. The bilateral agreement on social security applies as well.

The mutual procedures for the application of the Agreement are handled on the Moroccan side by the Ministry for Labour through the Department of Employment, and on the Spanish side by the Ministry of the Interior through the Government office for Foreigners and Immigration. The Agreement refers to «commitments already made by both countries to strengthen their cooperation in the field of labour law oversight, in particular to avoid the exploitation of Moroccans without legal status»¹⁴.

A joint coordinating committee has been set up to monitor the implementation of the Agreement, propose improvements, disseminate information, resolve difficulties in its application, etc.

The definition of «seasonal worker» excludes the application of the Agreement to Moroccans legally settled in Spain. It gives extreme flexibility to the duration of the authorized stay provided and the corresponding effective working hours, while integrating the corresponding operations into the common mechanism applicable to the migration of Moroccan labour in regard to selection, travel, and hosting in Spain. Article 14 declares, however, that «the conditions of residence and return of seasonal workers shall be subject to a written undertaking entered by the persons concerned with the Spanish authorities in accordance with the laws and regulations in force in the host country»¹⁵.

The province of Huelva, which accounts for 90% of Spain's strawberry exports, is the main architect of this experiment¹⁶, which has enjoyed decisive support from the EU¹⁷. The system specifically targets agricultural workers aged 25 to 45 with at least 2 children¹⁸ who would be less readily disposed to change employers or settle permanently in the country. The number of Moroccan women among seasonal migrants in Huelva thus rose from 200 in 2001 to 14,000 in 2009. After a drop during the economic crisis, it has seen a rebound in the last two years, reaching 16,000 in 2019.

14 The abovementioned report from the FIDH refers to an administrative agreement concerning Moroccan seasonal workers in Spain signed in Madrid on 30 September 1999 for a period of 3 years and renewable by tacit agreement (p. 21, note 28).

15 The commitment that migrant women sign for work in Huelva requires them to present themselves personally to the Spanish Consulate within one month of their return.

16 See D. Zeneidi, «Femmes/fraises Import/export» [Women/Strawberries, Import/Export], *Global food and utilitarian migration in Huelva province*, PUF, 2013, p. 9; see also <https://www.cairn.info/femmes-fraises--9782130624585-page-27.htm>

17 In 2004, the city obtained €1,196,000 in European funding as part of the Aeneas program (*Assistance to third countries directly related to migration management*) to set up a system for the management of female Moroccan workers. This program has been extended until 2013 with new funding from the European Union. See: <https://halshs.archives-ouvertes.fr/halshs-01525363> (p. 4, note 6).

18 According to the FIDH (*op. cit.*, p. 29), in 2002 the loss rate of female seasonal workers was 90% out of a total of 500. That rate remained high until recruitment procedures were put in place by the Spanish and Moroccan governments; these will then be further refined as part of the AENEAS Cartaya project. The director of ANAPEC ensures that the rate of return since 2005 has been at least 95%.

The usual contract template is written exclusively in Spanish and is a standard agreement these women workers must sign before being hired¹⁹. Their lawful presence in the country is limited in principle to a period of 3 months in the case of the Province of Huelva, but may be further shortened in case of a labour surplus, or extended to up to 9 months as authorized by labour legislation. The weekly working time is limited to 39 hours, in accordance with the legislation in force, but this maximum is given for indicative purposes only. The foreman has authority to assign the tasks and their duration; he thus has discretionary authority to determine the income earned from the work and to identify who will be named as «repeaters» when determining the next season's requirements²⁰.

Wages vary between €34 and €37 per day. The employers provide accommodation and transportation costs from Tangier to the place of work. The women workers must pay for their Spanish visa, passport fees, and travel expenses from their homes to the embarkation point in Tangier.

In Morocco, the ANAPEC national agency was appointed to manage these operations even before it was created. This institutional set-up also had technical and financial support from the European AENEAS program, within the framework of MEDA II. It provided for the creation, within the future ANAPEC, of an International Division (DI) and 4 regional agencies. This experience is now cited on the EU-African Union partnership website as an example of «good practice»²¹.

19 A national agreement was signed in 2006 between central authorities, trade unions and agricultural employers' organizations concerning the organization of migratory flows for seasonal agricultural campaigns. It was provided that a national-level Committee would implement its provisions, and that provincial commissions would handle analysis, labour requirements planning, determining how many workers would be needed and where labour would be needed, and organizing the workers' arrival and integration.

20 An examination of the contract appended to the FIDH report confirms that it provides for a minimum of 3 months of work and a duration running from January to June (art. 3). Art. 4 prescribes a weekly working time of 39 hours running from Monday to Sunday; this would seem not to provide a weekly rest period (art. 5). Art. 7 refers to the collective labour agreement in regard to layoff days. But that agreement only provides in such cases for the compensation of workers who have worked 270 days; this would exclude seasonal workers. The model contract for the women workers examined, by contrast, provides for 3 months firm. Allegations of sexual harassment have apparently been made against their foremen.

21 See <https://www.africa-eu-partnership.org/fr/success-stories/appui-institutionnel-la-circulation-de-personnes-aux-fins-de-travail-entre-lue-et-le>. The project was co-financed by Morocco. It had technical assistance from a consortium made up of public institutions in France (Pôle Emploi, the French Office for Immigration and Integration), Spain (FIAPP - International and Ibero-American Foundation for Public Administration and Policy) and Belgium (FOREM - Walloon Office for Employment and Vocational Training, and ACTIRIS - Brussels Regional Employment Office).

The Convention signed in 2010 between FUTEH²² and ANAPEC stipulates that contracting employers will guarantee:

- at least 18 days of effective work per month;
- reporting to social security;
- non-retention of passports during temporary residence;
- payment by the company of the full cost of the return trip if the worker is dismissed within the first 15 days.

Intake, transfer and return are to be handled by the Spanish. Oversight is to be provided by mediators under the supervision of Cartaya town hall. Labour inspectors and unions monitor respect of legal conditions on the Spanish side. ANAPEC has access to the premises²³.

Despite the arduous nature of the work and the risks of the corresponding migration, these jobs are in great demand. The conditions of the work and the remuneration it guarantees are much better and safer than those prevailing in Morocco in the same activity, especially in Spanish agricultural operations.

C - BILATERAL SOCIAL SECURITY CONVENTIONS

Equality of treatment between migrants and host country nationals with regard to social security preserves social security rights for all. Of the 18 agreements entered into by Morocco for this purpose, 15 are in force. Numerous difficulties have however impeded the portability of the rights these agreements are intended to guarantee.

The common objective of the bilateral social security agreements is:

- to remove discriminatory provisions based on nationality;
- to adjust the restrictions impacting the territorial scope of the legislation;
- to provide support for the preparation of pension insurance records for migrants;
- to establish cooperation between national social security institutions and agencies.

The agreements are generally based on the principle of the territoriality of social security. It is common, however, to neglect the principle of an automatic application of the rule of equality for certain categories of workers, such as workers on secondment and those working at transport companies.

22 Foundation for foreign workers in Huelva, created by the employers in Cartaya.

23 A joint statement indicates that the Minister for Labour and Professional Integration and the Deputy Minister for Moroccans Residing Abroad and Migration Affairs have signed an Agreement «to improve the procedure for the employment of seasonal workers in Spanish agricultural operations, guarantee them decent working conditions and establish a monitoring mechanism for the duration of the growing season». It also provides for the establishment of a joint commission to conduct farm visits to monitor the working conditions of seasonal women workers in coordination with the competent Spanish authorities.

When the worker and his or her family members reside in the country of employment, their coverage is guaranteed, but differences may appear when the worker or his or her dependents are temporarily out of the country of employment, or when the worker's family has remained in the country of origin.

The Agreement with Sweden retains in this respect the principles of equal treatment (Art. 3) and the accumulation of coverage periods in both countries (Article 10), without however expressly providing the solution to be applied with regard to the minimum periods required for compensation claims. Article 5 of the Agreement entered with Germany prohibits any rule that would make entitlement to benefits in kind or in cash dependent on a qualifying period. The Agreements entered with France and Spain, on the other hand, simply stipulate that only the rules of the country of residence shall apply. They explicitly provide for the coverage of family members remaining in the country of origin, whereas the Agreements entered with Denmark and Sweden do not address the issue. For its part, the Agreement with Germany refers to the adoption of an implementing text that would account for the legal provisions in force in both countries.

There are also differences in the formal handling of the time spent abroad by insured persons and their dependents. The Agreement entered with France makes mention only of their annual leave in the country. The Agreement entered with Spain, however, covers authorized absences as well as annual leave. Other agreements mention temporary residence (Belgium, Germany, Portugal and the Netherlands) or, more generously, time spent abroad (Denmark).

Some of the agreements stipulate that in order for changes of residence during sick leave to qualify for compensation, they must have either been previously authorized or formally registered. In the event of a definitive return to the country, the new agreements with France and Spain explicitly provide for the maintenance of benefits, while other agreements do not address this possibility.

In regard to compensation for industrial accidents and occupational illness, all the agreements provide for the maintenance of coverage in the event of a change of residence. The agreements with Portugal, Belgium and Denmark, however, specify that this must imply a trip to the country of origin. Provisions are made for the payment of family allowances, except in the place of residence. Their amount may differ depending on whether or not the children live in the country of employment (France, Belgium, Germany). The Agreement with Sweden is silent on this subject, but the Agreement with Denmark provides for administrative arrangements for children remaining in the country for needs related to their education. All the agreements provide for the maintenance and transfer of pension benefits for disability, retirement and dependents.

Recent changes introduced in the bilateral social security agreements with France and Belgium provide for the extension of illness benefits to insured persons permanently settled in Morocco. The Netherlands, however, decided to gradually reduce the amount of family allowances to be paid for children living in Morocco to 40% in January 2019, and finally to terminate them in January 2021.

The portability of social welfare entitlements has significant weight in migrants' decision to return to their country or bring their families to settle. A recent study on the issue

specifically investigated pension entitlements among Moroccan migrants²⁴. This Report (Sharaka Project) found that in the years 2010-2011 more than 266,000 Moroccans over the age of 65, mostly female, resided in OECD countries. Two-thirds of them were in the labour market, but their rate of employment was only 47%, and their rate of unemployment was 29%. The majority of pensioners were in a precarious situation, subsisting on partial pensions and minimum welfare benefits. This trend is expected to worsen. The majority of these migrants are unable to fulfil their desire to return to their country because of a lack of economic and legal security. Aside from family reasons, in particular the desire to maintain close relationships with their children and grandchildren, this seasonal migration is also motivated by rationales of a more economic nature, related to ensuring the maintenance of acquired social welfare entitlements, or the benefit of other assistance not subject to portability (pension payments, access to health care, additional minimum allowances for the elderly, housing allowances, etc.).

In addition, the precarious employment that has proliferated with the economic crisis and has more frequently affected immigrant workers is likely to have an impact upon their retirement. The conditions thus seem to be in place for an increase, in the years to come, in the number of disadvantaged individuals among elderly migrants, particularly those who had lived in Spain and Italy.

The Report considers that the issue of the portability of pensioners' rights primarily concerns persons who have definitively returned to Morocco, and their dependents receiving benefits on the basis of derived rights. Further complicating the picture is the diversity of pension systems and their connection to other social welfare benefits. Entitlement to these benefits is dependent upon conditions that may significantly differ from one country to the next, whether in terms of contribution periods, age, entitlement qualifications, or pensions.

Seasonal migration also likely poses the risk that migrants will contribute to foreign social security systems with no real prospect of future access to the social welfare benefits it provides at the end of qualification periods that will be difficult for them to complete.

D - THE ACCOMMODATION OF WHITE-COLLAR MIGRATION

Far removed from these bilateral labour agreements, other agreements have also been entered into to organize cross-border mobility through the granting of visas, repatriation and lawful temporary residence²⁵. These agreements address different groups.

Most post-master's students have little difficulty engaging in professional activity in Europe, Canada or the USA once they have finished their studies. Their material conditions, career prospects, socio-cultural environment, and consideration of previous stays abroad to obtain nationality all add weight to this option, even if there is still a possibility that they may subsequently return to their country of origin. Many Moroccans become binational even before the expiration of their first or second residence permit. Joining them are

24 Project Sharaka, on the portability of social welfare entitlements: <http://marocainsdumonde.gov.ma/wp-content/uploads/2019/01/%C3%89tude-sur-la-portabilit%C3%A9-des-droits-des-retrait%C3%A9s-MREau-Maroc.pdf>

25 See in particular the Agreement entered between Morocco and Spain on 13 February 1992 in Madrid on the movement of persons, transit, and the readmission of foreigners who have entered illegally, published by Dahir on 2 August 2012, (official gazette no. 6214 of 19 December 2013).

numerous graduates of prestigious Moroccan schools disappointed by the limited job and career opportunities offered by the local labour market, and individuals with advanced professional profiles pursuing the opportunities for recognition and promotion offered by the parent companies and professional networks specific to their activity. Among young professionals, migration seems even to have become a sign of intellectual and/or professional success. The term «brain drain» only imperfectly reflects the magnitude of this phenomenon and the motivations underlying it.

Selective immigration takes place within the context of scientific and technological competition as affirmed by the Lisbon strategy for Europe. Most legislation provides for the granting of residence and work permits to all executives and holders of advanced degrees for the duration of their first fixed-term contract, and for a duration of at least one year, renewable automatically, if their employment continues with an indefinite term contract. The first temporary residence and work permit will then be replaced by a new temporary residence permit or a long-term residence permit as soon as the holder provides proof of his or her continued exercise of professional activity producing sufficient income. The Agreement on residence and employment entered between the Kingdom of Morocco and the French Republic in Rabat on 9 October 1987 must be seen in this light²⁶.

Unlike the labour agreements governing collective emigration, this Agreement provides for the issuance of residence and work permits for the nationals of each of the contracting countries in a context of reciprocity.

Its provisions stipulate that Moroccans holding residence permits valid for at least 3 years on the date of the Agreement's entry into force are entitled to residence permits valid for at least 10 years. These permits are automatically renewable, and are equivalent to an «authorization to reside in the territory of the French Republic and engage in any professional activity, remunerated or unpaid, in any of the European departments thereof»²⁷.

Upon presentation of an employment contract approved by the competent authorities, Moroccans not falling into the aforementioned category who wish to engage in remunerated activity in France for a period of at least one year will receive a renewable residence permit valid for one year, marked «employee», and possibly stipulating geographical or professional restrictions. After 3 years of continuous residence in France, they may apply for a 10-year residence permit. Their application will be decided in consideration of the conditions of their professional activity and their financial means. The same rules apply to French nationals meeting the same conditions in Morocco.

Spouses and minor children entitled to family resettlement within either country are permitted to take up residence under the same conditions as holders of residence and work permits, regardless of their date of arrival. They enjoy equal eligibility for employment upon presentation of a contract approved by the competent authorities, and may not be denied on the basis of the employment situation (Article 7).

26 Published by the Dahir of 2 August 2011, official gazette no. 6080 of 6 September 2012.

27 Similar measures are provided for French nationals who have been lawfully residing in Morocco for 3 years: they are automatically granted a 10-year residence permit and an approval by the competent authorities authorizing them to engage in any paid professional activity anywhere within the national territory. Upon its expiration after those 10 years, the residence permit and work visa are automatically renewed for another 10 years.

Subject to common European measures, the extensions granted to the nationals of one nation for residence and work permits in the other are to be applied reciprocally.

Indeed, the Lisbon Strategy made it a goal for the European Union to develop a common migration policy, on the one hand seeking to attract the best profiles to win the struggle for competitiveness at the technological and scientific levels, and the other, taking measures to suppress illicit migration. The achievement of the former does not require bilateral cooperation, but the latter depends on integrated security cooperation as part of the Euro-Mediterranean vision, through a «neighbourhood policy».

II - THE LEGAL POSITION OF IMMIGRANTS IN MOROCCO

The country's inclusion in the European Migration Strategy has led Morocco to adopt legislation to combat unlawful migration and immigration **(A)**. The application of that legislation shows the scope of the legal system for the employment of foreigners, and tends to give it an overarching position **(B)**.

A - A BODY OF IMMIGRATION LAW DOMINATED BY MEASURES TO COMBAT UNLAWFUL MIGRATION

Inspired by the new French legislation and drafted in the context of the negotiation of the MEDA Cooperation Agreement with the European Union, Law 02/03 was adopted by the Parliament, promulgated by the King and published in the Official Bulletin, fast tracked for entry into force on 20 November 2003²⁸. A similar text was adopted by Spain within a week²⁹. The provisions of this law establish the basic rules for the admission and residence of foreigners in Morocco. Their enforcement and the penalization of violations are assigned to the supervisory authorities, operating under the Director General of National Security.

The new law repeals and replaces the previous provisions for the entry and temporary residence of foreigners in Morocco, and for migrants' application for prior administrative authorization to engage in professional activity³⁰. The law gives authorities broad powers to decide on the admission of foreigners to the territory upon their arrival, the issuance of residence permits, their withdrawal and cancellation, as well as on holding foreigners in detention areas, removal, or deportation.

28 Law 02-03 on the Entry and Residence of Foreigners in the Kingdom of Morocco, Emigration and Unlawful Immigration, Promulgated by the Dahir of 11 November 2003, Official Gazette of 20 November 2002.

29 See M. Ben Messaoud, *La situation des migrants entre la loi marocaine 02/03 du 11/11/03 et la loi espagnole 14-03 du 20 /11/03* [The situation of migrants between Moroccan law 02/03 of 11/11/03 and Spanish law 14-03 of 20/11/03], in «Lecture de la loi sur la migration», INEJ, Seminar Proceedings, Study Days no. 7, January 2006, p. 49.

30 Article 58 repeals the Dahir of 15 November 1934 regulating immigration to the French zone of Morocco; the Dahir of 2 January 1940 regulating the temporary residence of certain persons; the Dahir of 16 May 1941 on temporary residence authorizations; the Dahir of 17 September 1947 providing control measures in the interests of public security; and the Dahir of 8 November 1949 regulating the emigration of Moroccan workers. The speed with which this text was adopted must have surprised the writers of the draft Labour Code, because well after the entry into force of Law 02-03 they had included in the list of texts that it repeals the Dahirs of 1934 and 1941, which had thus been repealed 6 months prior.

The basic rule assumes that entry to the national territory must take place at border control posts, and this must be proven by a stamp placed on the travel document. Any person unable to provide this proof is thus considered to be in the country illegally. Upon entry, checks will be performed of travel documents, means of support, purpose of stay and guarantees of future repatriation. Admission is refused when the officers assigned to these positions consider the evidence submitted to be insufficient, or that the foreigner's presence may constitute «a threat to public order». The foreigner will in such case be sent back by the same means of transport he or she used to arrive. Foreigners have the right to notify the person they intended to visit, a lawyer of their choice, and their Consulate, but the terms for their exercise of this right are not set forth in any legal instrument. The decision is immediately enforceable and justifies detention at the premises under that same authority until the measures to be taken have been executed³¹.

Residence in the territory is authorized for the duration of the visa and, at most, for a period of 90 days. Beyond that, the foreigner must obtain a registration card or residence permit. During the entirety of their stay they must be able to present evidence and documentation justifying their lawful presence in the country upon request.

The right to temporary residence of a duration less than 90 days, or such duration as may be stipulated in the visa, registration card or the receipt issued in lieu thereof, may be revoked «if the foreigner is found to be engaged in gainful activity in Morocco without legal authorization, if consistent evidence indicates that the person concerned has come to Morocco to settle in the country, or if the foreigner's conduct disturbs public order»³². These measures may be accompanied by removal³³. Unless they hold a residence permit, foreigners may also be subject «to special supervision in consideration of their attitude or history» which may result in a prohibition on their residence in one or more provinces or prefectures, or in one or more selected districts thereof. Such foreigners will then be forbidden to travel outside the area permitted on their residence documents without a safe conduct pass issued by the police or the Royal Gendarmerie³⁴.

The registration card is issued for a period of 1 to 10 years, and according to the specific case indicates the holder's student status, their authorized profession, or their visitor status for persons living on their own revenues. If the holder of a lawful residence document fails to request its renewal upon expiration, or when notified of the refusal to issue or renew such document, he or she must leave the national territory within 15 days.

Residence permits in turn are granted to foreign persons who have lawfully resided in the national territory for at least four years, after a verification of their means of support, living conditions, the conditions of their exercise of professional activity, and, where appropriate, any evidence they may provide in support of their intention to settle permanently in

31 Combination of art. 4 §5 and art. 34 §1.

32 Art. 40.

33 «Any foreigner to whom administrative removal measures have been applied and appeals to the presiding judge at the administrative court in urgent proceedings may concomitantly file for a stay of execution» - Art 33.

34 Art. 41.

the territory of Morocco. The law provides for 7 categories of persons who may be issued these permits, but seems to allow non-specific exemptions³⁵. Application refusals and withdrawals of authorization may be appealed in urgent proceedings before the judge presiding at the administrative court within 15 days. The institution of such proceedings «shall not preclude the possibility of a removal or deportation decision in accordance with Chapters III, IV and V of Title One of this law»³⁶. This will delay execution until the court issues its decision.

The same recourse may be taken against any deportation decision. The judge presiding at the administrative court hearing the case must then issue a ruling within 4 days. Where the measure is accompanied by the applicant's detention on the premises of the supervisory authority, the judge may at his or her discretion travel to the courthouse nearest to the place of detention to hear the applicant's pleadings. On this occasion, the applicant may request the «disclosure of the file containing the documents forming the basis of the contested decision», which presumes that he or she may not have been aware of such basis until this point in the procedure. The applicant may also request an interpreter and a court-appointed attorney. It is hard to imagine the judge hearing such applications and issuing a decision in a public hearing within only 4 days. Moreover, as long as notice has been served to the applicant, his or her presence at the public hearing is not necessary. In spite of the reference to urgent proceedings, the court in fact rules on the merits. Article 24 § 2 states that «if the removal decision is overturned, the surveillance measures provided for in Article 34 below shall immediately be terminated and the foreign person shall be provided with a provisional residence authorization until a further decision on his or her status is made by the administration». The ruling may be appealed to the higher administrative court within one month. This appeal however is not suspensive. The administration will therefore proceed without delay with removal if the action for annulment has been rejected, and must review its own decision if the annulment is granted.

There are certain unique aspects to the checks provided by the judicial branch on the conditions of detention. The law states that the prosecutor shall be notified immediately of any decision to hold a foreigner at premises not forming part of the judicial and correctional systems. In such cases, the law authorizes the prosecutor to visit such premises to check the conditions of detention and inspect the records containing the information on these persons' civil status and the reasons for their detention at such premises. After 24 hours, the supervisory authority or public prosecutor's office must refer the matter to the judge presiding at the court of first instance, ruling in urgent proceedings, for a decision as to whether to extend the measure ordered or the house arrest of the person concerned for a period of up to 15 days. The same parties may then petition the same court to renew such order for another 10 days. The judge's decisions are subject to appeal before the judge presiding at the Appeals Court, who must deliver a ruling within 48 hours.

35 This would include spouses of Moroccans, foreign or stateless children of Moroccan mothers, parents with custody of minors residing in Morocco and naturalized by operation of law at least 2 years prior to the age of majority, spouses and minor children of holders of residence cards, those same children when they reach the age of majority, and refugees and lawful aliens when they have proved that they have maintained habitual residence in Morocco for at least 15 years or since the age of 10 for a period of at least 10 years.

36 See art. 20.

This attachment to administrative law of the powers assigned to the supervisory authorities, such as the formal involvement of the Public Prosecutor's Office and civilian judges in the decision to impose custodial measures, does not however imply that such practices can be presumed to respect the fundamental rights of migrants. It should be emphasized that Article 22 of the United Nations Convention on the Protection of the Rights of Migrant Workers and Members of Their Families stipulates that a removal decision by a competent authority must always be written, substantiated and notified to interested parties in a language they understand. According to §4, «Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion».

The penal process accentuates the deterrence and effectiveness of these measures, which the law categorizes as administrative in nature. The Public Prosecutor's Office may, at any time, invoke Article 42 to overrule any attempt to challenge the decisions of the supervisory authority. The text sanctions attempts to penetrate the national territory and any non-compliance with the legal or regulatory prescriptions relating to the duration of temporary residence and its extension beyond this authorized duration with penalties of 2,000 to 20,000 dirhams and from one to six months' imprisonment, or by one or the other of these two sanctions. However, in consideration of imperatives in terms of security and public order, the administrative authority may deport such foreign persons, whether to the country of which he or she is a national or to another country if they wish.

Presence in the national territory without a registration card or residence permit is punishable by imprisonment of one month to one year and a fine of up to 30,000 dirhams, and evasion of a deportation order is punishable by 2 years' imprisonment. The majority of these offenses, as well as many others, are punishable by double the penalty in case of recidivism.

Criminal procedure does provide for legal aid and the presence of an interpreter in the sentencing phase when the accused speaks a language unknown to the judge. However, nothing of the sort is provided in the police investigation and police custody phases. Accused persons are therefore required to sign reports that are written in Arabic and do not mention the questions asked. As these documents are authoritative until proven false, the chances of a fair trial appear limited, especially since many courts sorely lack resources³⁷.

It can be inferred from this general overview of Law 02/03 that its provisions confer almost unlimited discretionary power upon the supervisory authority to declare an alien to lack legal status and expeditiously decide to impose measures of detention, removal or expulsion, or even to bring charges resulting in imprisonment. Such a system is highly deterrent to migrants planning to settle in Morocco to work and live there. However, it has little effect on those whose emigration has been entirely unlawful starting from their entry into the national territory, and whose identification is consequently difficult to establish. The European strategy was established and extended to neighbouring countries in order to address this kind of unlawful migration.

37 See N. Khrouz, «De la respécification de la notion de transit», in *Les migrants au Maroc*: <https://books.openedition.org/cjb/865>

B - A BODY OF LABOUR LAW LAGGING BEHIND THE INTEGRATION NEEDS OF IMMIGRANTS

The ratification of the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families clearly did not attract the attention of the drafters of the Labour Code, which entered into force in 2004 any more than did the entry into force of Law 02/03 a few months earlier.

Chapter IV of Book IV of the Labour Code thus relays the stipulations of preceding texts, the embryonic provisions of which assign to the government labour authority the task of authorizing the salaried employment of foreign workers, requiring a stamp from that authority on their employment contracts³⁸. Law 19-12 on Male and Female Domestic Workers³⁹ extended the application of those rules to that category of employees. However, the powers exercised by the labour administration in this respect have only a slight influence on their right to temporary residence in the national territory **(1)**. The situation of non-salaried foreign workers appears even more confused in the absence of a legal system clearly determining the conditions under which they are permitted to engage in professional activity **(2)**.

1 - Salaried employment of foreigners

Article 516 of the Labour Code stipulates that «any employer wishing to hire a foreign employee must obtain authorization from the government labour authority. This authorization is provided in the form of a stamp placed on the employment contract. The date of the stamp is the date on which the employment contract takes effect. Any modification made to the contract also requires the stamp mentioned in the first paragraph of this article. Authorization may be withdrawn at any time by the government labour authority». The following provision adds that «contracts of employment entered with foreign persons must conform to the model established by the government labour authority».

Acting by virtue of these provisions, the labour authority adopted the decree of 9 February 2005⁴⁰, in line with prior administrative practice, which had made all contractual commitments into fixed-term contracts by granting approvals for a maximum of one year. The system was modified by the decree of 30 October 2018⁴¹ and finally replaced pursuant to the decree of 19 April 2019⁴², which is currently in force.

These texts are of an extreme simplicity, and transfer part of their prescriptions to the model contract attached thereto. The criteria used can be inferred through the list of documents required. This list is currently determined by decision of the Ministry of Labour⁴³.

38 The previous model for the contracts of employment of foreign persons was governed by decree of the Minister of Labour and Industrial Affairs no. 714.64 of 25 December 1964, establishing the model contract pursuant to the Dahir of 15 November 1934 on immigration.

39 Promulgated by the Dahir of 10 August 2016, Official Gazette no. 6610 of 5 October 2016, p. 1038.

40 Decree of the Minister of labour and professional training no. 350-05 of 9 February 2005 establishing the model employment contract for foreign persons, Official Bulletin no. 5540 of 5 July 2007, p. 908.

41 Official Gazette no. 6736 of 20-12-2018, p. 1952.

42 Official Gazette no. 6786 of 13 June 2019 (Arabic ed.).

43 MTIS decision no. 1, Taechir, 2019 of 1 July 2019.

The new contract model marks a substantial change from prior practice, by providing for the possibility of opting for an indefinite or fixed term contract. However, no indication is given as to whether the administration will be able to grant shorter terms of its own accord, requiring applicants to renew their applications when their terms are up, as it has done up to now, or to refer to the employers' choice in accepting or refusing their applications. Moreover, the only place to find any information about what administrative practices are applied is a document published on the ministry's website⁴⁴.

A common, paperless procedure administered by the Department of Labour must be used in order to obtain the proper authorization stamp on the employment contract. Except for certain categories of workers who are expressly exempted⁴⁵, this must be preceded by an investigative procedure conducted with ANAPEC in view of obtaining an occupational activity certificate⁴⁶. The intervention of this body in the procedure is not provided for under the Labour Code, nor does it appear in the legal powers assigned to this public institution⁴⁷. As the administration responsible for labour has thus inherited broad authority in these matters, even allowing it to withdraw its authorization at any time with no need to justify the decision⁴⁸, it is possible that it might legitimately outsource part or all of the procedure to ANAPEC or any other legal entity, in particular one operating under its supervision, as it does in this case. Its mandate consists of checking whether any profiles corresponding to the post to be filled exist in the national talent pool on the job market. For this purpose, it examines the application file, which must include the supporting documents, the model for the advertisement to be published and the receipt for payment of the service⁴⁹. A simplified procedure provides an exemption from calls for applications for high-level

44 «Employment procedure for foreign employees in Morocco» updated in July 2019.

45 Specifically: 1) the spouse of a Moroccan, 2) a descendant of a Moroccan mother, 3) a native of Morocco, 4) family reunification, 5) partner, 6) manager, 7) authorized representative, 8) secondment, 9) temporary residence of more than 10 years, 10) short term assignment, 11) exceptional legalization, 12) young professional, 13) Casa Finance City, 14) offshoring, 15) special enterprise agreement, 16) athletes, 17) refugees and stateless persons, 18) special categories. An examination of the paperwork required for each category gives a more precise definition of the conditions required.

46 Until the 2019 introduction of new arrangements, these exemptions were formally limited to foreigners born in Morocco or descendants of Moroccan mothers, provided they had been resident for at least six months; the foreign spouse(s) of Moroccans; workers on secondment for a limited period through foreign companies or their subsidiaries working on in projects in Morocco; persons mandated by a foreign employer for assistance purposes for a period not exceeding six months; political refugees and stateless persons.

47 However, we observe that under art. 3, ANAPEC's mission is to contribute to the organization and implementation of skilled employment promotion programs decided upon by the public authorities. See Law no. 51-99 establishing the National Agency for the Promotion of Employment and Skills, promulgated by the Dahir of 5 June 2000, Official Gazette no. 4804 of 15/06/2000, p. 460.

48 See art. 516 of the Code.

49 The fees are 5000 dh for advertisement publication requests, and 1500 dh for each additional request, up to a limit of 5 per job position at the same company during the year. Fees are 1500 per request when advertisement is not required.

management positions⁵⁰, profiles presumed rare or unavailable in Morocco⁵¹, and for certificate renewals for the same position or a position to which an employee was promoted.

A comparison of this system with the immigration control system suggests that the types of employee profiles targeted here are those that are found abroad and are sought by the company concerned for recruitment, providing evidence that an entry visa has been obtained for employment, and then undertaking the regulatory procedure required to obtain approval for the foreigner's contract of employment. The provisions in force also provide the obligation for the requesting employer to bear foreigners' repatriation costs in the event of a possible work visa refusal. However, no provisions are made concerning the foreign person's repatriation at the end of their contract, whether due to expiration or early termination.

It may also be observed that immigration control authorities may exercise their powers for the issuance and withdrawal of residence permits regardless of the provisions of the particular type of work permit granted. This would seem to reflect the amendment introduced in 2018 to the 2005 decree of the Minister of Labour, which states: «this contract shall be subject to all provisions in this domain that are in force in the Kingdom of Morocco»⁵².

Once admitted to work, the foreign worker has the same rights and assumes the same obligations as Moroccans, with three exceptions. In terms of collective representation, foreigners may not be admitted to the management of trade unions, nor may they run in elections for representatives within institutions. In terms of individual rights, the administrative practice of granting foreigners an approval of their employment contracts for a period of up to one year at a time precludes the coverage of the employment relationship by the protective provisions concerning dismissal. In matters other than salaried employment relationships, the law applicable to foreign workers remains relatively unclear, due to the silence of the law on the exercise by foreigners of unregulated activities and the conditions required for the exercise of the various liberal professions.

2 - Non-salaried work by immigrants

The basic rule prohibits any foreigner with a residence visa not exceeding 3 months from engaging in a gainful activity without specific authorization. If violations of this prohibition are observed, if consistent evidence exists assume that the visitor has come to Morocco to settle there, their residence permit may be cancelled⁵³. However, as stated in Article 40, the measure does not preclude the possibility of engaging in a gainful occupation, even

50 A1 list, including CEOs, senior management positions, top officials at multinational companies or companies employing more than 50 workers and having invested at least 1 million dirhams, officers second in charge at establishments with 500 employees, NGO managers with at least 3 years of experience, and branch managers with 2 years of experience at the head office.

51 The list includes more than 20 profiles, ranging from Radio and TV program directors, experienced engineers, architects and aircraft captains to chief stewards, horse trainers, and camel breeders.

52 See art. 3 of the Decree of the Minister of Labour and Occupational Integration of 30 October 2018 amending MEFP Decree no. 350-05 of 9 February 2005 establishing the model for employment contracts entered with foreign persons, Official Gazette no. 6736 of 20/12/2018, p. 1952. This provision is included in Article 2 of the 2019 decree.

53 Art. 40 § 2.

with a very short-term visa, provided that the holder obtains a specific authorization to such effect. The type of authorization in question, the authority empowered to issue it, and the procedures for making such requests, however, are unclear.

The second rule concerns foreigners who can prove that they have sufficient funds to support themselves. The registration card issued to these persons is marked «visitor». To obtain this card, they must «undertake to refrain from the exercise of any professional activity in Morocco, subject to prior authorization». In this regard as well, then, the prohibition of employment is not absolute. As drafted, this simply means, rather, that a prohibition applies to the exercise of activities requiring an authorization, whether for all workers, or specific categories of workers, such as foreigners⁵⁴.

The same Article 13 governs temporary residence for training purposes. It states that «the registration card issued to foreign persons proving that they are pursuing educational activity or studying in Morocco, and who can prove that they have sufficient funds to support themselves, shall be marked "student"». This rule makes no mention of whether these trainees can engage in employment. There is no indication that this status prevents the migrant students from engaging in remunerated activity, whether related to their training or for a very short period of time.

Paragraph 3 of the same Article 13 is the only passage that deals with residence permits for employment. But it is as summary as the previous ones. It stipulates only that «registration cards issued to foreign persons wishing to exercise a professional activity subject to authorization in Morocco, and who provide proof of obtaining such authorization shall include an indication of the activity in question». This measure applies only to the exercise of activity subject to an authorization, and it is only after that authorization has been obtained that these registration cards indicating the authorized activity can be issued to the migrant worker.

The question remains open in all three of these situations in regard to the exercise of activities not explicitly subject to authorization; in this case, those that are not covered by labour law or part of regulated professions. The practice of most regulated professions is reserved for Moroccans only, and their regulations provide for a mandatory registration procedure. This is the case of accountants⁵⁵, notaries⁵⁶, attorneys⁵⁷, topographical engineers⁵⁸, doctors⁵⁹, pharmacists⁶⁰, and architects⁶¹. Other texts are less explicit, either as regards the condition of nationality, or the mandatory registration with the professional

54 Art. 13 § 1.

55 See art. 20 of Law 15-89 promulgated by the Dahir of 8 January 1993 establishing the regulations for the profession of chartered accountant.

56 See art. 3 of Law 32-09 promulgated by the Dahir of 22 November 2011 on the profession of notary.

57 See art. 5 of Law 28-08 promulgated by the Dahir of 20 October 2008 on the profession of attorney.

58 See art. 22 of Law 30-93 promulgated by the Dahir of 25 February 1994 on the exercise of the profession of topographical engineer.

59 See art. 4 of Law 131-13 promulgated by the Dahir of 10 February 1915 on the practice of medicine.

60 See art. 93 of Law 17-04 establishing the Code of Medicines and Pharmacy promulgated by the Dahir of 22 November 2006.

61 See art. 4 of Law 016-89 promulgated by the Dahir of 10 September 1993 on the exercise of the profession of architect.

order, while subjecting access to the profession to a mandatory authorization procedure requested from the General Secretariat of Government⁶². The latter's website repeatedly cites the text of Law 02-03 among the provisions governing the professions concerned, as if to assert reservations regarding their compatibility.

Conclusion

Morocco continues to perceive itself as a country of emigration. Formally, the labour agreements that have historically conferred this status upon it remain in force. However, since the end of the phenomenon of collective emigration from Morocco organized and implemented by co-signatory European countries in the mid-1970s, they are no longer applied. Moroccan workers abroad, many of whom have become citizens of their host countries, are no longer determined by reference to the stipulations of those agreements, but rather by European directives, national laws, and collective agreements, which provide for the equality of all workers in terms of employment and social security protections. The only exception to this development is the temporary emigration of agricultural workers to Spain, which is the subject of collective proceedings jointly supervised by the administrations of both parties and the representatives of Spanish employers.

To the extent that bilateral social security agreements govern the portability of social security rights, the intention motivating them was that they would take effect over time via the eventual permanent return of workers. However, the transition from seeing emigration as temporary to seeing it as a phenomenon leading to permanent settlement in the host country excludes the usefulness of these agreements for binational and permanent residents, and makes them considerably less useful to persons working in irregular situations - often undeclared - who rarely fulfil the conditions necessary to claim benefits under social security. The obsolescence of these agreements has made way for bilateral agreements more in line with the European strategy, aiming at attracting rare profiles and encouraging the collaboration of third States in reducing migration by repatriation assistance and joint efforts to control cross-border mobility.

The new Moroccan migration policy shows that the country has objectively embarked on a project to bring immigrants' rights in line with the requirements of this international instrument, by eliminating the repressive provisions of Law 02-03, repealing conflicting legislative rules, and putting in place protective measures for immigrants of both lawful and unlawful status.

While adherence to the security-focused European policy transforms its territory into a space of seasonal migratory movement, the requirements of the UN Convention identify Morocco as both a place of origin, transit and employment, expected to guarantee the rights established by that convention for all migrant workers present on its territory, even if it means increasing its attractiveness and the resulting seasonal migration.

62 See in particular: art. 20 of Law 43-13 promulgated by the Dahir of 22 June 2016 on the practice of the nursing profession; art. 4 of Law 12-01 on private medical biology laboratories, promulgated by the Dahir of 3 October 2002; art. 4 of Law 07-05 on the National Order of Dentists; art. 3 of the decree of 9 June 1995 implementing the Dahir establishing the law of 6 October 1993 on the National Order of Veterinarians.

This is the path intended to be taken by the immigration bill being promoted by all stakeholders. It is also the path those stakeholders support in view of the adoption of a law on refugees and asylum, leaving aside discussions about the outsourcing of asylum policy by the European Union, and debates over the inadequacy of the Geneva Convention to situations where protections are necessary due to economic violence and the effects of climate change, rather than to the actions of particular countries and the consequences of the wars imposed on their peoples.

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