

Case Study

THE SPECIFICITY OF EXECUTION IN PERSONAL STATUS MATTERS: A STUDY ON THE ENFORCEMENT OF NATIONAL AND FOREIGN JUDGMENTS BEFORE THE EXECUTION JUDGE

Najlaa Flayyih*, Ahmad Fadli, Zeana Abdijabar, Abdulaziz Alhassan and Pierre Mallet

ABSTRACT

Background: The enforcement of personal status judgments poses unique legal and procedural challenges, particularly in jurisdictions where family law is deeply intertwined with religious and cultural principles. The United Arab Emirates (UAE) has introduced a specialised execution judge for personal status matters to enhance procedural efficiency and safeguard family stability. This reform represents a significant departure from traditional execution mechanisms, granting the judge discretionary powers to modify enforcement conditions while addressing the sensitivities of family-related disputes. However, questions arise regarding the scope of judicial intervention, the adequacy of procedural safeguards, and the compatibility of this system with established legal principles, particularly in cases involving foreign judgments. This study critically evaluates these aspects and conducts a comparative analysis of the French legal system to explore best practices.

Methods: This research employs a doctrinal legal methodology, analysing statutory frameworks, judicial precedents, and legislative intent behind introducing the personal status execution judge in the UAE. A comparative legal analysis is conducted with the French legal system to examine procedural safeguards, jurisdictional limitations, and the role of judicial discretion in enforcing family law judgments. Special focus is given to the legal implications of modifying visitation rights, travel restrictions, and enforcement conditions, particularly in cross-border cases.

Results and Conclusions: *The findings reveal that the appointment of a specialised execution judge for personal status matters offers notable advantages, including expedited enforcement, enhanced confidentiality, and tailored procedural mechanisms aligned with the unique nature of family disputes. However, the discretionary authority granted to the execution judge—particularly in modifying visitation schedules and prohibiting travel—raises concerns regarding the stability of judicial decisions and acquired rights. Additionally, the research highlights challenges in enforcing foreign personal status judgments, emphasising the need for clearer legislative provisions to address conflicts of laws. The comparative analysis with the French legal system underscores the importance of judicial expertise in family affairs and the necessity of integrating procedural safeguards to uphold fairness and legal certainty. The study recommends refining the scope of the execution judge’s powers, strengthening procedural protections, and reconsidering specific legislative terminologies to ensure a balanced approach between judicial efficiency and fundamental legal principles.*

1 INTRODUCTION

In an unprecedented move not found in other Arab legal systems, the Emirati legislator introduced the position of a judge specialised in personal status execution, granting them additional powers alongside the traditional jurisdiction of execution judges. These powers were tailored to meet the needs of Emirati society and to ensure consistency with legal provisions derived from Islamic jurisprudence regulating marital relations.

Special consideration was given to the sensitivity of family relationships by making execution sessions in personal status matters non-public and dispensing with the need for formal sessions unless otherwise determined by the judge of personal status execution. Additionally, the legislator included provisions such as prohibiting the travel of a child under custody and modifying the times and location of visitation or accompaniment. These interventions are permitted even when they conflict with the terms stated in the execution document or the reconciliation minutes ratified between the parties, thereby granting the judge discretion to override prior agreements or judicial decisions in the interests of justice and child welfare.

To assess the effectiveness of this unique legal development, the research incorporates a comparative analysis of the French legal system. The study examines how the enforcement of personal status judgments is regulated in France, where execution procedures are rooted in a civil law tradition with distinct mechanisms for safeguarding the rights of all parties involved. By comparing both systems, the research aims to highlight best practices and potential areas for reform within the Emirati model while considering the specific cultural and religious considerations that shape UAE family law.

The research revolves around the extent to which the provisions related to the jurisdiction of the judge of personal status execution affect the validity of judgments, the rights of the wards, and the principle of legal stability. It also examines the adequacy of the provisions within the jurisdiction of the judge of personal status execution to facilitate the efficient and speedy implementation of those judgments without compromising family interests. The research aims to determine whether these provisions require modification, development, or enhancements to strengthen their effectiveness.

The objectives focus on defining the jurisdiction of the execution judge and evaluating it by balancing the rights of the parties involved in the execution process and assessing their compatibility with procedural safeguards. The research also compares the Emirati approach with the French system to identify possible legal improvements and procedural refinements.

The research is significant because it explores a topic that no specialised study has addressed extensively, apart from general references in prescribed textbooks for execution law courses. Additionally, it represents the first evaluative study of this innovative system. By introducing a comparative dimension with French law, the study provides a broader perspective on how personal status enforcement mechanisms function in different legal traditions, offering valuable insights for potential legislative enhancements in the UAE.

2 THE ADVANTAGES OF ASSIGNING A JUDGE FOR THE EXECUTION OF PERSONAL STATUS

Lawsuits related to personal status have unique characteristics that differ from debt-related lawsuits. This is because both parties involved in the execution process usually belong to the same family, and conflicts typically do not revolve around financial matters except incidentally. The essence of the dispute is often related to living arrangements and conflicts arising within the family and society.

Therefore, assigning a judge dedicated to executing judgments related to personal status is considered a positive step.¹ This initiative acknowledges the unique nature of family-related disputes and their connection to the family, taking into account the traditions and customs of Emirati society² and the provisions of Islamic law related to personal status matters³.

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- 1 Federal Decree-Law no (42) of 2022 'Promulgating the Civil Procedure Code' [2022] Official Gazette of UAE 737. Art. 226 states: "Exceptionally from Article 207 of this Law, judgments and decisions related to personal status matters shall be executed under the supervision of a specialized judge appointed at the headquarters of each court."
 - 2 *ibid.* Art. 227 states that "The judge for the execution of personal status matters alone, without others, is responsible for executing executive documents and decisions related to personal status matters ... taking into account customs and prevailing traditions in the country."
 - 3 Islamic law is a source of legislation in the UAE and many other Arab countries, especially in personal status matters such as marriage, divorce, custody, maintenance, lineage, and others. See: Sahib Ubaid Al-Fatlawi, *The Easy Explanation of Civil Law*, vol 1 (Wael Publishing House 2011) 51.

Additionally, this approach will expedite the execution process by reducing the timeframes for personal status matters compared to regular debts.⁴ Furthermore, it provides specialised executive procedures and mechanisms that complement and enhance the traditional jurisdiction of the execution judge.⁵

Moreover, the legislator has granted the execution judge a proactive role in proposing reconciliation to the parties involved—an intervention that represents the last opportunity to address family conflicts and prevent the family's dissolution.

However, this otherwise progressive approach could be more effective if one of the conditions for appointing judges assigned to handle personal status matters required expertise in social psychology and family affairs.⁶ While the law mandates the presence of assistants such as social workers, it does not specify that these professionals must be specialised in social psychology or have experience in family therapy.⁷ Given the evolution of social psychology into an independent specialisation in the field of sociology, there is a clear need to reinforce practical experience with such specialised knowledge, especially considering that the legislator has already endorsed this approach in the regulatory regulations issued by Cabinet Resolution No. 75 of 2018. The UAE legislator has retained this regulation in the new Civil Procedures Law under Decree No. 42 of 2022, effective 2 January 2023.⁸

As part of this experiment, the UAE legislator has considered the sensitivity of family disputes by requiring that execution proceedings be conducted privately, without the need for formal sessions.⁹ This principle is endorsed in comparative legislation when courts are

4 Federal Decree-Law no (42) of 2022 (n 1). Art. 231 states that "Executive documents and decisions related to personal status matters shall be executed after 7 days from the date of announcement in the document." Furthermore, Art. 233, para. 3, specifies that the period for the debtor's compliance shall be within 7 days. Appeals against judgments issued under the Personal Status Law must be filed within 15 days from the date of issuance of the judgment (Art. 232, para. 1).

5 The traditional jurisdiction and functions of the execution judge are discussed in various legal texts, such as those mentioned in the following references: Mondher Abdul Karim Al-Qadi, *Explanation of the New Civil Procedures Law for the United Arab Emirates* (Dar Al-Badeel Publishing 2024) 228; Mustafa Al-Matouli Qandil, *Concise Guide to Compulsory Execution According to the Civil Procedure Law of the United Arab Emirates* (Brighter Horizon Publishers 2014) 36; Mahmoud Al-Kilani, *Rules of Evidence and Execution Provisions* (Dar Al-Thaqafa for Publishing and Distribution 2010) 184; Bakr Abdel Fattah Al-Sarhan, *Compulsory Execution under the UAE Civil Procedures Law* (University Library, Sharjah 2013) 33.

6 This position is based on the fact that the law has given a positive role to the execution judge in personal status matters, through which rifts can be reconciled and failures in dispute resolution during the trial can be addressed. This may indicate that the disputes are entrenched and require deep expertise in the field of family problem-solving to provide a final and serious opportunity for reconciliation.

7 The importance of family therapy is discussed on the website: *Middle East Academy for Training and Development* <www.meatddwarat.com> accessed 25 February 2025.

8 Federal Decree-Law no (42) of 2022 (n 1).

9 *ibid*, art 230.

empowered to privately conduct trials involving events or matters affecting families and other issues with their sensitivities.¹⁰

These benefits undoubtedly also apply to the enforcement of foreign judgments and decisions related to personal status matters. The UAE legislator did not distinguish between foreign and national judgments when appointing an execution judge for personal status matters.

3 VALIDITY OF JUDGMENTS IN THE IMPLEMENTATION OF PERSONAL STATUS MATTERS

In the new regulation of the system of the personal status judge, some indications suggest a potential impact on the principles of the validity of judgments and acquired rights in two respects.

First, the law grants the personal status judge¹¹ the authority to offer reconciliation to the parties involved in the execution process. The judge is also empowered to approve settlement agreements reached between the parties regarding the execution of the enforcement document, even if such agreements contradict the enforcement document or the decree executed under it, provided that they do not compromise the interests of the wards.¹²

This apparent encroachment on the enforcement document or the decree—by allowing parties to agree on matters contrary to its provisions—seems superficial. This is because the lawsuit and the judgment remain the property of the litigants, allowing the party in whose favour the judgment was issued to waive the rights awarded to them if they so wish. Moreover, both parties have the right to agree to depart from the terms of the judgment and

10 Ivy Daure et Souad Yadini, 'Le dialogue entre une juge et une psychologue' (2020) 373(1) *Le Journal des psychologues* 18, doi:10.3917/jdp.373.0018.

11 Federal Decree-Law no (42) of 2022 (n 1) art 229.

12 Appeal no (581) of 2016 *Personal Status* (Supreme Federal Court of UAE, 7 March 2017).

As decided by the Supreme Federal Court: The principle in custody is the best interest of the child, which must take precedence over the desires of any guardian for custody and over the availability or non-availability of custody conditions or the exploitation of their right to transfer, regardless of the reasons. Therefore, if it is evident that the best interest of the ward lies in staying with a specific guardian, custody is awarded to that guardian, prioritizing the ward's interest even if it results in the ward staying with the mother who has lost her legal right to custody. The focus of custody is the welfare of the ward, and when their benefit is achieved in something, that is where their fate lies, even if it contradicts the guardian's interest, because the child's right to care and protection takes precedence over the guardian's right. The mother is more entitled to custody of the child, provided she is competent and capable, as she is more tender towards the child than others. The key point in all circumstances is appeal no. (581) of 2016 - Civil and Commercial Judgments dated March 7, 2017 *Personal Status*.

regulate their relationship differently from what is stated in the enforcement document. This aligns with the legal principle applicable in cases where settlement is permissible.

However, a problematic issue arises in the second aspect: the authority granted to the execution judge to unilaterally modify visitation, access, and transportation schedules specified in the enforcement document. While these may appear to be procedural elements, such a provision may affect the validity of judgments and the acquired rights of the parties involved in the judicial process. Upon the issuance of the judgment, the rights and interests of the parties regarding visitation, access, and transportation have been established and are often relied upon by the parties in organising their affairs and schedules according to what was stated in the enforcement document. These matters become acquired rights for them after the judgment is issued, and they should not be easily modified, even though they pertain to procedural matters and scheduling.

The principle of the stability and validity of judgments must take precedence over the immediate need for changing schedules. Additionally, these schedules and locations are determined only after examination and scrutiny by the competent court following the hearing of the parties' arguments and submissions. Modifying the locations and schedules contrary to the enforcement document deprives the parties of the procedural guarantees that are considered part of the general legal framework. Such changes may also come as a surprise to the parties, thereby undermining the stability of legal positions and family relationships.

4 THE PROHIBITION OF TRAVEL FOR WARDS

The legislator granted the judge overseeing personal affairs the authority to prohibit the travel of wards. This matter requires careful consideration for several reasons:

1) It was assumed that the issue of travel prohibition should fall outside the jurisdiction of the judge overseeing personal affairs. This judge's authority should be confined to the boundaries of the judgment issued in the lawsuit and within the framework of the execution document alone. Granting any order or authority beyond the limits of what is stated in the execution document contradicts procedural guarantees, as it deprives parties of those guarantees and their right to present defences, respond to requests, and access a full range of appeal mechanisms.

2) Additionally, the issue of prohibiting the travel of wards is highly sensitive because it affects the rights of wards—individuals who cannot express themselves,¹³ defend their rights, or know how to ensure their care and supervision. This issue also intersects with the

13 Mohamed Hassan El-Senoussi, 'The Universal Declaration of the Rights of the Child: Its Concept, Origins, Philosophy, and Contents' (2020) 31 (120) *Journal of Research of the Faculty of Arts, Menoufia University* 3049, doi:10.21608/sjam.2020.138160.

parents' or guardians' awareness of the children's rights and necessitates strong guarantees to provide the basic assurances prescribed for children in Islamic law and international conventions.¹⁴ Therefore, decisions prohibiting the travel of wards should be entrusted to family courts within an objective lawsuit where all parties to the relationship can present their arguments and defences. Such a process should include the possibility of seeking the opinion of experts from medical committees and social psychiatry professionals. This level of scrutiny is only possible within the context of full litigation procedures before competent family courts, where necessary guarantees can be assured.¹⁵ Leaving such a significant decision to the discretion of the execution judge—based solely on a party's request—may not provide those guarantees.¹⁶ This requires reconsideration and assigning the matter to a judge in family courts within an objective lawsuit rather than a direct decision from the judge overseeing personal affairs without relying on a final judicial ruling.¹⁷

14 Pierre Calle, 'Les fondements de l'autonomie de la volonté en droit de l'Union européenne (droit des personnes et de la famille)' in Amélie Panet, Hugues Fulchiron et Patrick Wautelet (éd), *L'autonomie de la volonté en droit des personnes et de la famille dans les règlements de droit international privé européen* (Bruylant 2017) 31-2.

15 Mohamed Abdelnabi Elsayed Ghanem, *Civil Case Management and its Procedural System* (Dar Al-Nahda Al-Arabiya 2018) 180; Mustafa Al-Matwally Qandeel, *A Concise Guide to Judiciary and Litigation* (3rd edn, Al-Afaq Al-Mashriqa Publishers 2017) 366.

16 From another perspective, Lawyer Sara Abdullah Ghanem – from the Dubai Courts – believes that the UAE legislator's establishment of the Personal Status Enforcement Judge was a response to the numerous changes that occur after a personal status ruling is issued. These changes necessitate the issuance and swift execution of decisions, particularly concerning custodial children. This is crucial for safeguarding the child's psychological well-being as a priority, preserving society, and ensuring that each party receives their rightful entitlement under the current reality (Sara Abdullah Ghanem, Email interview of 30 March 2025).

17 Appeal no (225) of 2010 (Supreme Federal Court of UAE, 8 June 2010). The Supreme Federal Court ruled in accordance with Art. 149 of Federal Personal Status Law No. (28) of 2005, stating that "the custodian is not permitted to travel with the ward outside the country without the written consent of the legal guardian, and if the guardian refuses, the matter shall be referred to the judge." According to the explanatory memorandum of this law, the custodian is not allowed to travel with the ward outside the country without the written consent of their legal guardian. If the legal guardian refuses to provide such consent, the matter shall be adjudicated by the judiciary. It was also established that the freedom of travel is guaranteed to every individual under the Constitution of the country, and there is no obstacle preventing the custodian from traveling with the ward if the latter is in need of their custody, such as an infant child. The Hanafi scholars have opined that the custodian is permitted to relocate with their child if they are relocating to their home country, where they were married. They base their opinion on the saying of the Prophet Muhammad (peace be upon him), "Whoever is a resident of a town is considered one of its people." While the Maliki jurists generally do not agree with the custodian relocating with the child, they make an exception if the child is an infant. According to Maliki jurisprudence, the welfare of the ward takes precedence over considerations of custody transfer, as established in the documents, both disputants are of Egyptian nationality, born in the city of Alexandria, and their marriage contract was concluded there. The child in question was born on July 29, 2009, and is still in the nursing stage, dependent on the care of his mother. Therefore, his best interest lies in being with her. Since the defendant failed to issue written consent for the ward to travel with his mother, it constituted unjustified negligence, harming both the plaintiff and the ward,

Decision No. 3 of 2021, which adopts the procedural guide for personal status matters before the Dubai courts, highlights guarantees that are not extended to the execution judge. One such guarantee is stipulated in Article 1 regarding establishing one or more committees for family guidance in the personal status courts. Additionally, Article 14, pertaining to custody regulations, outlines 30 specific criteria the court must adhere to—criteria that may also be applied when the court considers a petition to prevent a child from travelling. The application of these criteria goes beyond the jurisdiction of the execution judge, whose powers are limited to executing the enforcement document. Accordingly, the authority to prohibit a child's travel should be entrusted to the personal status courts under the provisions of Articles 149–157 of the Personal Status Law, where the necessary litigation safeguards are provided.

Furthermore, the principle of prioritising the best interests of the child is reflected in Article 114 of the Personal Status Law,¹⁸ reinforces the significance of considering women's rights as primary caregivers. The law acknowledges that custody is a right of the child and grants mothers the initial priority in custody arrangements following the dissolution of marriage. This principle aligns with the broader framework of women's empowerment, ensuring that mothers can fulfil their caregiving responsibilities without legal barriers. A well-defined judicial process for travel prohibition decisions should consider the role of custodial mothers, preventing undue restrictions that may hinder their ability to care for and protect their children. Strengthening procedural safeguards within family courts, rather than through execution judges, ensures that custody rights are upheld fairly, transparently, and supportive of women's legal standing in family matters.

The same applies to Egyptian legislation, where the Family Court is accompanied by an office composed of legal experts and specialists in family affairs. The Egyptian legislation has regulated the criteria followed by the court when considering the issue of custody comprehensively in Law No. 1 of 2000. This provides the basic guarantees for the rights of the child.¹⁹

3) There is an issue related to the terminology used: “preventing the wards from travelling.”²⁰ It would be better to use a phrase that indicates preventing “accompanying

and conflicting with the best interest of the child, which is considered legally significant. Thus, the challenged judgment, which prohibited the child from traveling with his mother, was flawed and accordingly overturned by the Supreme Federal Court in Appeal No. (225) of 2010 dated June 8, 2010.

18 Federal Decree-Law no (41) of 2024 ‘On the Issuance of the Personal Status Law’ [2024] Official Gazette of UAE 785(2). The Law will come into effect on April 15, 2025.

19 Law of the Arab Republic of Egypt no (1) of 2000 ‘Law Regulating of Some Conditions and Procedures of Litigation in Personal Status Matters’ <<https://lawyer-egy.com/eg-law-codes/kanon-elosra-12000.html>> accessed 25 February 2025.

20 Federal Decree-Law no (42) of 2022 (n 1). Art. 324 grants the execution judge the authority to allow wards to travel.

the wards when travelling,"²¹ as the prohibition is not directed at the wards specifically but at the person accompanying them. Additionally, the term "prevention" does not align well with the term "wards," as the latter do not have the capacity to manage their affairs or make decisions regarding them.

When comparing the above with the French legal position, several key points emerge:

1. Jurisdiction and Authority: In France, the authority to decide on matters related to the travel of a child lies with the *Juge aux affaires familiales* (Family Court Judge), who is specifically designated to handle family disputes, including custody and travel issues. This is similar to the proposal in Section 4 for entrusting such decisions to family courts rather than the execution judge. The French system ensures that decisions are made within a specialised framework that prioritises the child's best interests, aligning with the view that family courts provide stronger guarantees for litigation.²²
2. Procedural Guarantees: The French legal system, as outlined in Articles 373-2 of the Civil Code, requires both parents' consent or judicial authorisation for a child to travel abroad. This mirrors the concerns raised in Section 4 about the need for procedural guarantees and the involvement of all parties in the decision-making process. The French approach ensures that both parents have a say in matters affecting the child, which aligns with the argument that decisions should not be left solely to the execution judge.²³
3. Terminology and Focus: The French system focuses on the accompanying parent rather than the child, as highlighted in Section 4. For example, the French courts evaluate whether the accompanying parent poses a risk of not returning the child. This is consistent with the suggestion to use terminology such as "preventing accompanying the wards when travelling" instead of "preventing the wards from travelling."²⁴
4. Expert Involvement: The French system allows for the involvement of experts, such as social workers and psychologists, to assess the child's best interests. This aligns with the proposal in Section 4 to involve medical committees and specialists in social psychiatry when making decisions about travel prohibitions.²⁵

21 Federal Decree-Law no (41) of 2024 (n 18). It is notable that the same Emirati legislator employed a more precise term in Personal Status Law, namely "traveling with wards," in Art. 149. Similarly, the Moroccan legislator also used a precise term, "preventing travel with wards," in Art. 179 of the Family Code.

22 Marie-Anne Frison-Roche, 'Les offices du juge' in Jean Foyer, *Auteur et législateur: Leges Tulit, Jura Docuit: Ecrits En Hommage A Jean Foyer* (PUF 1997) 463.

23 Charlotte Dubois, 'L'autonomie du droit pénal et le droit de la famille' (2021) 4 Cahiers de droit de l'entreprise 24.

24 Flore Capelier, 'De la protection de l'enfant à la protection des enfants: une loi source d'ambiguïtés' (2022) 2 Revue de droit sanitaire et social 348.

25 Jérôme Boursican, 'La preuve en droit de la famille' *Gazette du Palais* (Paris, 14 avril 2020) 56.

5. Legal Framework: The French legal framework, including Articles 373-2-6 and Articles 373-2-9 of the Civil Code, provides clear criteria for evaluating travel requests, such as the risk of abduction or the impact on the child's well-being. This is comparable to the 30 criteria outlined in Dubai's procedural guide, which Section 4 suggests should be applied by family courts rather than the execution judge.

5 IMPLEMENTING JUDGMENTS WITH A FOREIGN ELEMENT

Some issues were expected to be addressed by the law when defining the jurisdiction of the judge in charge of executing personal status matters, especially in cases involving a foreign element—whether due to the nature of the enforcement process or the foreign origin of the judgment. It is known that the United Arab Emirates is home to a large foreign community, accounting for more than 85% of the population, consisting of both citizens and foreigners. The judgments issued by courts overseeing decisions made by the judge responsible for executing personal status matters have resulted in many cases involving a foreign party. This necessitates considering the implications for residents of the UAE who are foreigners.

The presence of foreign elements in the enforcement process raises numerous issues related to conflict-of-law issues. This raises questions about the possibility of granting the judge in charge of personal status matters the authority to amend the content of the judgment clause in a foreign judgment that is valid in the country of issuance and cannot be tampered with. Can the national judge, in cases where the law allows the enforcement of foreign judgments, modify the content of those judgments? And how should the judge in charge of executing personal status matters address these developments in the absence of explicit legal provisions regulating such possibilities?²⁶

Addressing these questions requires a dual perspective:

1. Cases where the executive decision involves parties who are foreigners.
2. Cases where the judgment to be executed is foreign.

On the first point, if the judgment is domestic but concerns foreigner nationals residing in the UAE, any dispute falls under UAE law according to the principle of *lex loci executionis* stated in Article 21 of the Civil Transactions Law. This article stipulates that “the rules of jurisdiction and all procedural matters shall be governed by the law of the state in which the action is brought or the proceedings are conducted.”²⁷ Since enforcement proceedings will take place in the UAE, Emirati law applies.

26 Monica-Elena Buruiană, ‘*L’application de la loi étrangère en droit international privé*’ (thèse de doctorat, Université de Bordeaux 2016) 18-22 <<https://theses.hal.science/tel-01800429v1>> accéder 25 février 2025.

27 Federal Decree-Law no (5) of 1985 ‘Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates’ [1985] Official Gazette of UAE 158.

There is a strong case to be made for recognising the will of the individuals in selecting the applicable cases. Where the individuals involved agree to apply UAE law—especially given that they reside in the country—this choice could be seen as establishing local law as their personal law in the relevant context.

This view is supported by legislative reforms. In 2020, the UAE legislature amended its conflict-of-laws rules concerning certain matters of personal status, such as marriage, divorce, and wills.²⁸ The purpose of this amendment was to permit the application of local law, given the significant presence of foreigners in the country. Applying the law of the place of conclusion rather than national law increases the likelihood of applying local law rather than foreign law.

Similarly, the 2024 amendment to the UAE Personal Status Law reflects this approach, permitting parties to agree on applying local law. Paragraph (3) of Article (1)²⁹ provides that: "The provisions of this law shall apply to non-citizens unless one of them insists on applying their law or any other law permitted by the legislation in the state."

This provision demonstrates the legislator's position regarding the ability to agree on applying a law other than that determined by the conflict of laws rules. It constitutes a clear departure from the mandatory nature of such rules, as it allows litigants to agree on the application of local law through the phrase "any law permitted by local legislation." Consequently, if neither party insists on applying foreign law, this indicates that their will is directed towards the application of local law.

As for the second aspect, the logical answer to the previously mentioned question is that the execution judge does not have the authority to amend any provision of a foreign judgment, as this would contradict the nature and function of the execution judge, which is generally limited to issuing to enforcement orders without intervening in the content of judgments. However, it is observed that the legislator has granted the execution judge, in personal status matters, the authority to amend appointment times and locations for visitation and accompanying.

Could this serve as a basis for granting the execution judge, in cases where the judgment to be executed is foreign, the authority to modify the content of the judgment? Are there any differences between foreign judgments and domestic judgments in this context? Naturally,

28 *ibid.* For instance, Art. 12, Para. 1 of the UAE Civil Transactions Law stipulates that: "The substantive conditions for the validity of a marriage shall be governed by the law of the country in which the marriage was concluded." Similarly, Para. 3 of Art. 17 provides that: "The substantive provisions governing wills and all dispositions effective after death shall be subject to the law specified in the will or disposition. If no law is specified, the law of the state to which the testator or disposer belonged by nationality at the time of death shall apply."

29 Federal Decree-Law no (41) of 2024 (n 18). Furthermore, Para. 3 of Art. 1 of Law on Personal Status states that: "The provisions of this law shall apply to non-citizens unless one of them insists on applying their own law or any other agreed-upon law permitted by the applicable legislation in the state."

there should be no differences, indicating that the advantages of designating an execution judge for personal status matters apply equally to the enforcement of both foreign and domestic judgments and decisions in such matters. Thus, the UAE legislator did not distinguish between foreign and domestic judgments when establishing the designation of an execution judge for personal status matters.

Then, there is a question of whether a judgment prohibiting the travel of wards can apply to foreign wards or whether the execution judge, in personal status matters, must consider the nationality law of the wards. According to established principles of private international law, in the absence of a specific provision, which law should prevail—the national law or the nationality law of the wards?³⁰ By examining various judgments by the execution judge, it becomes clear that there is no distinction between wards who are citizens and those who are foreigners. The national law is applied while also considering the nationality of the ward or the guardian.

The enforcement of personal status judgments involving a foreign element presents significant challenges across comparative legal systems. For instance, the French Court of Cassation ruled in Case No. 19-24.870 (5 November 2020) that when a parent unlawfully relocates a child abroad, they cannot later claim that the other parent's return of the child to the country of origin constitutes an unlawful relocation.³¹ This decision underscores the importance of determining the child's habitual residence and establishing jurisdictional authority in cross-border family disputes.

In the UAE, similar considerations arise when executing foreign judgments related to child custody and travel restrictions. However, unlike the French system—which prioritises the jurisdiction of the child's habitual residence before the unlawful removal—the UAE legal framework primarily applies national execution rules with limited reference to the child's nationality law. This contrast highlights the need for clearer legal provisions addressing conflicts of laws in enforcement procedures, particularly regarding the judge's authority to modify foreign judgments or restrict international travel in personal status matters.

30 It is known that comparative legislations differ in their provisions regarding personal status matters according to their cultures, traditions, and heritage, and they have specific positions in this regard. For example, Chinese law does not recognize divorce between spouses holding Chinese nationality unless it is conducted before Chinese courts. So, how should the execution judge in personal status matters deal with a judgment issued outside China decreeing divorce between Chinese spouses? These are issues that can only be resolved by establishing specific texts regulating conflicts of laws in execution.

31 Appeal no 19-24.870 (French Court of Cassation, First Civil Chamber, 5 November 2020) <<https://www.courdecassation.fr/decision/5fca2be7d71d5d1063767908>> accéder 25 février 2025.

6 CONCLUSIONS

6.1. Results

The UAE legislation establishing a judge for execution in personal status matters is a positive step that provides many advantages, most notably considering the specificity of family disputes and their difference from executing disputes related to debt. This step also provides innovative means and mechanisms to remedy any deficiencies in family relationships that were not resolved during the lawsuit. It ensures the expeditious implementation of judgments by reducing the timeframes. Additionally, it guarantees confidentiality to protect family relationships and prevent disputes from escalating and affecting other family members and relatives.

The law has introduced provisions granting the execution judge, in personal status matters, the authority to approve reconciliation even if it contradicts the content of the executed judgment. It also grants the judge the authority to modify the locations and timings of visitations and escorts contrary to the content of the execution instrument. This raises issues concerning the validity of judgments and the acquired rights of the parties to the lawsuit.

The law grants the execution judge, in personal status matters, the authority to prohibit the travel of the wards. This matter may need to be reconsidered regarding the seriousness of such a decision, perhaps leaving it to the competent court within the specified conditions for filing the lawsuit to provide essential procedural guarantees and to ensure the rights of the wards as stipulated in national laws and international conventions. It was also noted that the terminology used in this regard may need to be reviewed.

It became evident that due to the demographic diversity of residents in the UAE and the presence of a large foreign community compared to the number of citizens, issues related to conflicts of laws may arise when executing personal status matters. This requires legislative intervention with texts regulating these matters and providing solutions to the problems that may arise in this context.

6.2. Recommendations

To enhance the privacy of the work of the judge executing personal status matters, it is advisable that the offices of judges responsible for such execution be located adjacent to personal status courts and distinctly separated from other court premises, particularly criminal courts.

Moreover, expanding the use of remote communication technologies across all stages of execution in personal status matters would significantly alleviate the burden on execution applicants, who are often women burdened with household responsibilities and childcare, making it difficult for them to attend multiple execution sessions in person.

It is also recommended that a dedicated fund be established to support expenses associated with the court of execution in personal status matters. In emergencies, this fund would cover expenses that cannot be fulfilled or are delayed, preventing harm and deprivation for those involved. Once fulfilled, the expenses can be recovered and returned to the fund.

In addition, the appointment of a specialised position in social psychology to support the judge in executing personal status matters is essential. Priority should be given to female professionals in this field to facilitate their communication with the parties involved—especially women—in a manner that respects the traditions of Emirati society.

Introducing a credit registry specifically for personal status matters would further strengthen enforcement mechanisms. Listing the names of individuals who delay execution—particularly in maintenance or child support obligations—could prevent others from falling victim to dealing with them. The existence of such a registry would serve as a deterrent against deliberate procrastination, indicating that those who use procrastination as a means to evade execution will face consequences in their professional lives.

Furthermore, the authority to issue travel bans for wards is proposed to be transferred from the execution judge to the personal status courts. Additionally, the terminology currently used—"prohibiting the travel of wards"—should be revised to "prohibiting the escorting of wards when travelling".

Finally, there is a pressing need to address conflicts of laws in execution matters related to personal status. The following provisions are recommended for inclusion:

- "Judges executing personal status matters are exempted from the authority to modify visitation, custody, and escort schedules in judgments issued in a foreign country. The execution is carried out in accordance with the conditions specified in the executed judgment."
- "In lawsuits concerning prohibiting the escorting of wards when travelling, the provisions of the law of the nationality of the wards shall apply, and no provision to the contrary shall be enforced."

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AUTHORS INFORMATION

Najlaa Flayyih*

PhD (Law), Associate Professor, Civil Procedure Law, College of Law, Ajman University, Ajman, United Arab Emirates

n.flayyih@ajman.ac.ae

<https://orcid.org/0000-0002-2807-9350>

Corresponding author, responsible for research methodology, data curation, investigation, writing-original draft.

Ahmad Fadli

PhD (Law), Associate Professor, Private International Law, College of Law, Ajman University, Ajman, United Arab Emirates

a.fadli@ajman.ac.ae

<https://orcid.org/0000-0003-2117-7801>

Co-author, responsible for conceptualization, formal analysis, validation, writing-original draft.

Zeana Abdijabar

PhD (Law), Professor in Commercial Law, College of Law, Ajman University, Ajman, United Arab Emirates

z.abdijabar@ajman.ac.ae

<https://orcid.org/0000-0001-7679-3498>

Co-author, responsible for research methodology, data curation, investigation, writing-original draft.

Abdulaziz Alhassan

PhD (Law), Professor in Criminal Law, Faculty of Law, Ajman University, Ajman, United Arab Emirates

a.alhassan@ajman.ac.ae

<https://orcid.org/0009-0002-0934-5374>

Co-author, responsible for research methodology, data curation, investigation, writing-original draft.

Pierre Mallet

PhD (Law), Associate Professor, Civil Law, Faculty of Law, Ajman University, Ajman, United Arab Emirates

p.mallet@ajman.ac.ae

<https://orcid.org/0000-0003-4990-7108>

Co-author, responsible for research methodology, data curation, investigation, writing-original draft.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Тематичне дослідження

СПЕЦИФІКА ВИКОНАННЯ СУДОВИХ РІШЕНЬ У СПРАВАХ, ЩО СТОСУЮТЬСЯ ОСОБИСТОГО СТАТУСУ: ДОСЛІДЖЕННЯ ВИКОНАННЯ НАЦІОНАЛЬНИХ ТА ІНОЗЕМНИХ СУДОВИХ РІШЕНЬ ЗА УЧАСТІ СУДДІ-ВИКОНАВЦЯ

Найлаа Флайїх*, Ахмад Фадлі, Зеана Абдіджабар, Абдулазіз Альхассан та П'єр Маллет

АНОТАЦІЯ

Вступ. Виконання рішень щодо особистого статусу створює унікальні правові та процесуальні проблеми, особливо в юрисдикціях, де сімейне право глибоко переплетене з релігійними та культурними принципами. Об'єднані Арабські Емірати (ОАЕ) запровадили спеціалізованого судді-виконавця з питань особистого статусу для підвищення процесуальної ефективності та збереження стабільності сім'ї. Ця реформа, що зважає на делікатність сімейних спорів та надає судді дискреційні повноваження змінювати умови виконання судових рішень, є суттєвим відходом від традиційних механізмів. Однак виникають питання щодо обсягу судового втручання, адекватності процесуальних гарантій і сумісності цієї системи з встановленими правовими принципами, особливо у справах, пов'язаних з іноземними судовими рішеннями. Це дослідження критично оцінює ці аспекти та проводить порівняльний аналіз із правовою системою Франції для вивчення найкращих практик.

Методи. У цій статті використовується доктринальна юридична методологія, проаналізовано законодавчу базу, судові прецеденти та наміри законодавця, що сприяли створенню посади судді з виконання особистих статусів в ОАЕ. Порівняльно-правовий аналіз проводиться з правовою системою Франції для вивчення процесуальних гарантій, юрисдикційних обмежень і ролі суддівського розсуду у виконанні рішень у справах сімейного права. Особлива увага приділяється правовим наслідкам зміни прав на відвідування, обмежень на подорожі та умовам виконання судових рішень, особливо у транскордонних справах.

Результати та висновки. Висновки показують, що призначення спеціалізованого судді-виконавця з питань особистого статусу дає значні переваги, зокрема прискорене виконання, підвищену конфіденційність та адаптовані процесуальні механізми, узгоджені з унікальною природою сімейних спорів. Однак дискреційні повноваження, надані судді-виконавцю, особливо щодо зміни графіків відвідувань і заборони на поїздки, викликають занепокоєння стосовно стабільності судових рішень і набутих прав. Крім того, дослідження висвітлює проблеми у виконанні іноземних судових рішень щодо особистого статусу, наголошуючи на необхідності більш чітких законодавчих

положень для вирішення колізій. Порівняльний аналіз, що проводиться із правовою системою Франції, підкреслює важливість судової експертизи у сімейних справах та необхідність інтеграції процесуальних гарантій для підтримки справедливості та правової визначеності. У дослідженні було рекомендовано уточнити обсяг повноважень судді-виконавця, посилити процесуальний захист і переглянути конкретну законодавчу термінологію для забезпечення збалансованого підходу між ефективністю судочинства та основними правовими принципами.

Ключові слова: оформлення особистого статусу, суддя-виконавець, сімейне право, суддівський розсуд, правова стабільність, іноземні судові рішення, колізійне право, право ОАЕ, порівняння з правовою системою Франції.