

Egyptian Court of Cassation on the application of the Hague Service Convention

[The author wishes to thank Justice *Hossam Hesham Sadek*, Vice President of the Civil and Commercial Chamber of the Court of Cassation, and reporting judge in the case at hand, for granting access to the Supreme Court's ruling].

1. Introduction

In a recent ruling (22/05/2017), the Egyptian Court of Cassation tackled with the issue of service of process abroad. The facts of the case were the following: The claimant (and appellant) was an Egyptian Medical Equipment company, situated in Cairo. The respondents and appellees were a Chinese company, with its seat in Nanshan district, Shenzhen, the Egyptian General Organization for Import and Export Control, and an Egyptian company, with its seat in Heliopolis, Cairo.

2. Facts and instance ruling

The Appellant filed a lawsuit against the Chinese Company and the Second Appellee at Cairo Court of Appeal, requesting a judgment obliging the First Appellee to pay the amount of ten million Egyptian pounds as monetary and moral compensation resulting from the contract's termination. The Appellant asserted that it had been assigned as the sole agent of the First Appellee in Egypt, for selling ultrasonic wave devices, and that it was unexpectedly notified by the First Appellee that the contract was terminated.

The first instance court ordered that the lawsuit be dismissed for lack of proper service to the Chinese company. The Appellant claimed that service had been effected through the Public Prosecution Office, following all necessary procedures through diplomatic channels in China, pursuant to article 13 (9) of the Egyptian Civil and Commercial Code of Procedure (CCCP), and by notification of the claim to the first Appellee's legal representative (Commercial Agent) pursuant to article 13 (5) CCCP.

Article 13 (9) CCCP states that, if no international treaty or a specific provision of

law is applicable, service shall be made by delivering the documents to the public prosecutor, who then forwards them to the Minister of Foreign Affairs, to be delivered through diplomatic channels to the country of destination. Art. 13 (5) CCCP stipulates that, if service is addressed to a foreign company that has a branch or agent in Egypt, domestic service shall be effected (i.e. to the branch or agent located in Egypt).

3. The Supreme Court ruling

The Court of Cassation referred initially to Art. 13 (5) & (9) CCCP. It then mentioned Articles 3 & 14 of the Judicial Cooperation Treaty on Civil, Commercial and Criminal Matters between the Arab Republic of Egypt and The People's Republic of China, signed on 21/4/1994, which stipulates that: *“For the purposes of requesting and providing judicial assistance, parties shall communicate through their central authorities unless otherwise provided for in this Treaty. Central authorities of both parties are represented by the Ministries of Justice. Both parties shall serve judicial documents in civil and commercial matters pursuant to Hague Convention on the service Abroad of Judicial and Extrajudicial Documents in civil or Commercial Matters concluded on 15/11/1965”*.

Based on the above, the Court of Cassation decided as follows: The Hague Convention exclusively stipulates methods, means and conditions for serving judicial documents unless agreed between the Parties on other methods pursuant to Article 11 of the same Convention, and obliges the judge to stay proceedings, save when a document was served by a method prescribed by the internal law of the State addressed, or when the document was actually served to the defendant in its residence under one of the methods prescribed in the Convention in sufficient time to enable him to arrange for his defence.

Since the legislator has permitted in Article 13(5) CCCP that foreign companies may be served by delivering a copy to its branch or agent in Egypt, their existence is considered a question of fact under the exclusive competence of the court. Accordingly, the Court of Cassation confirmed the instance decision, which ruled that service made to the first Appellee through the third appellee (Trade And Importing Company in Heliopolis), ostensibly being its commercial agent and representative, was improper, since the representative of the latter denied its relation with the first Appellee.

Finally, delivering the document to the Public Prosecution in order to take necessary actions towards service by diplomatic channels is not sufficient, because notice was not delivered / served to the first Appellee.

4. Conclusion

The judgment offers a valuable insight into the practice of Egyptian courts in regards to notification of documents abroad. It is noteworthy that the Court of Cassation examined carefully all legal regimes related to the subject matter: It referred to domestic law (CCCP), the Egyptian - Chinese bilateral treaty, and the multilateral convention, to which the bilateral convention refers. The question whether service of process abroad was necessary or not was decided on a substantive level: Given that the appellant failed to demonstrate that the third appellee was the representative of the Chinese company, the court rightfully considered that service solely to the local Transmission Authority through the Prosecutor's Office does not suffice. Hence, whenever the Hague Service Convention applies, the Court of Cassation dismisses fictitious service (*remise au parquet*).