Egyptian Supreme Court on the Enforcement of Foreign Judgments – Special Focus on the Service Requirement

I . Introduction

Egypt and its legal system occupy a unique position within the MENA region. Egyptian law and scholarship exert a significant influence on many countries in the region. Scholars, lawyers, and judges from Egypt are actively involved in teaching and practicing law in many countries in the region, particularly in the Gulf States. Consequently, it is no exaggeration to say that developments in Egyptian law are likely to have a profound impact on neighboring countries and beyond, and warrant special attention.

The cases presented here were recently released by the Egyptian Supreme Court (*mahkamat al-naqdh*). They are of particular interest because they illustrate the complex nature of legal sources, particularly with respect to the enforcement of foreign judgments (on this topic, see Béligh Elbalti, "Perspective of Arab Countries", *in* M. Weller et al. (eds.), *The 2019 HCCH Judgments Convention – Cornerstones, Prospects, Outlook* (Hart, 2023), pp. 195 ff). These cases also provide a good opportunity to elucidate the basic principles regarding the service requirement, which, as the cases discussed here and the comments that follow show, can pose particular challenges.

II. Facts

Two cases are presented here. Both involve the enforcement of judgments from neighboring countries (Kuwait in the first case and Saudi Arabia in the second) with which Egypt has concluded conventions on the enforcement of foreign judgments. In both cases, enforcement was granted by lower courts. The parties challenging the enforcement then appealed to the Supreme Court. The main grounds of appeal in both cases revolve around the issue of proper service of

process. Ultimately, the Supreme Court ruled in favor of the appellants in both cases.

III. Summary of the Rulings

- **Case 1: Appeal No. 2765 of 25 June 2023 (Enforcement of a Kuwaiti Monetary Judgment)**

Proper service is a prerequisite to be verified by the enforcing court before declaring a foreign judgment enforceable, as stipulated in Article 298 of the Code of Civil Procedure (hereinafter CCP). Enforcement should be refused unless it is established that the parties were duly served and represented. This is in line with the provisions of the Convention on the Enforcement of Judgments concluded between States of the Arab League, in particular Article 2(b), as well as Article 30 of the Riyadh Convention on Judicial Cooperation, which was ratified by Egypt by Presidential Decree No. 278 of 2014, and according to which foreign default judgments rendered in a contracting state shall not be recognized if the defendant has not been properly served with the proceedings or the judgment. […] [The record indicates that the appellant challenged the enforcement of the foreign judgment on the basis of insufficient service. The enforcing court admitted the regularity of the service, but without stating the basis for its conclusion. As a result, the appealed decision is flawed and requires reversal with remand].

- **Case 2: Appeal No. 17383 of 14 November 2023 (Enforcement of a Saudi custody judgment)**

According to Article 301 of the CCP, conventions signed by Egypt take precedence over domestic law. Egypt ratified the Convention on the Enforcement of Judgments issued by the Council of the League of Arab States by Law No. 29 of 1954 and deposited the instruments of ratification with the General Secretariat of the League on July 25, 1954. The Kingdom of Saudi Arabia also signed the Convention on May 23, 1953. Consequently, the provisions of this Convention are applicable to the present case. […] The appellant argued that he had not been properly served with the summons because he had left the Kingdom of Saudi

Arabia before the trial, which led to the foreign judgment. However, the judgment under appeal did not contain any valid response to the appellant's defense or any indication that the enforcing court had reviewed the procedures for serving the appellant. Furthermore, it did not examine whether the service of the appellant was in accordance with the procedures laid down by the law of the rendering State. Consequently, the appealed decision is vitiated by an error of law which requires it to be quashed.

Comments

The enforcement of foreign judgments in Egypt is regulated by Articles 296 to 301 of the CCP (for an English translation of these provisions, see J. Basedow *et al.* (eds.), *Encyclopedia of Private International Law – Vol. IV* (Elgar Editions, 2017), pages 3163-4). It is also governed by the conventions on the enforcement of foreign judgments ratified by Egypt (for a detailed overview in English of the enforcement of foreign judgments in Egypt under the applicable conventions and domestic law, see Karim El Chazli, "Recognition and Enforcement of Foreign Decisions in Egypt", *Yearbook of Private International Law*, Vol. 15 (2013/2014), pp. 387). The two cases presented above concern enforcement under these conventions.

In this regard, it is noteworthy that Egypt has established an extensive network of bilateral and regional multilateral conventions (for a detailed list, see Elbalti, *op. cit.* pp. 196, 199). With regard to multilateral conventions, Egypt has ratified two conventions adopted under the auspices of the League of Arab States: (1) The Arab League Convention on the Enforcement of Foreign Judgments and Arbitral Award of 1952 (hereinafter referred to as the "1952 Arab Judgments Convention". On this Convention, see eg, El Chazli, *op. cit.* pp. 395-399) and (2) The Riyadh Convention on Judicial Cooperation of 1983 (hereinafter referred to as the "1983 Riyadh Convention". On this Convention, see eg, Elbalti, *op. cit.* pp. 197-198). It is important to note that the 1983 Riyadh Convention is intended to replace the 1952 Arab Judgments Convention in relations between the States Parties to both Conventions (see Article 72).

Bilateral conventions include a convention concluded with Kuwait in 1977. This convention was replaced by a new one in 2017.

1. With regard to the first case, the following observations can be made:

a. This case appears to be the first case in which the Supreme Court has referred to the 1983 Riyadh Convention since its ratification in 2014. This is noteworthy in light of the numerous missed opportunities for the Court to apply the Convention (see eg., *Supreme Court Appeal No. 5182 of 16 September 2018*. In the *Appeal No. 16894 of June 6, 2015*, the Riyadh Convention was invoked by the parties, but the Court did not refer to it. See also 2(b) below).

b. It is also noteworthy, and somewhat surprising, that the Supreme Court referred to the 1983 Riyadh Convention in a case concerning the enforcement of a Kuwaiti judgment. This is because, contrary to what is widely acknowledged, Kuwait has *only signed* but *did not ratify* the Riyadh Convention (on this point see Elbalti, *op. cit.*, page 197 fn (118)). Since Kuwait is a party only to the 1952 Arab Judgments Convention, the Supreme Court's reference to the 1983 Riyadh Convention was inaccurate. Moreover, if the 1983 Riyadh Convention had been applicable, there would have been no need to refer to the 1952 Arab Judgments Convention, since the former is intended to replace the latter (Article 72 of the Riyadh Convention).

c. Conversely, the Supreme Court completely overlooked the application of the 2017 bilateral convention with Kuwait, which, as noted above, superseded the 1977 bilateral convention between the two countries. This case provided another missed opportunity for the Court to address the so-called problem of conflict of conventions, as both the 1952 Arab Convention and the 2017 bilateral convention were applicable with overlapping scopes. In the absence of special guidance in the text of the conventions, such a conflict could have been solved on the basis of one of the two generally admitted principles: *lex posteriori derogat priori* or *lex specialis derogat generali* (for an example of a case adopting the latter solution from the UAE, see *Abu Dhabi Supreme Court, Appeal No. 950 of 26 December 2022*).

d. This is not the first time the Egyptian Supreme Court has dealt with the enforcement of Kuwaiti judgments (there are 10 cases, by my count). In all of these cases, the court referred to the 1952 Arab Judgments Convention in addition to domestic law. It is only in two cases that the Court referred to the

1977 Kuwait-Egypt bilateral convention in addition to the 1952 Arab Judgments Convention (*Supreme Court Appeal No. 3804 of 23 June 2010* and *Appeal No. 15207 of 11 April 2017*). In the majority of cases (8 out of 10), the Court refused to enforce Kuwaiti judgments. The main ground of refusal was mainly due to, or including, lack of proper service.

2. With regard to the second case, the following observations can be made:

a. Egypt does not have a bilateral convention with Saudi Arabia. However, both Egypt and Saudi Arabia are parties to the 1952 Arab Judgments Convention and the 1983 Riyadh Convention. As noted above, the 1983 Riyadh Convention replaces the 1952 Arab Judgments Convention for all States that have ratified it (Article 72). Therefore, the Supreme Court's affirmation that "the provisions of the [1952 Arab Judgments] Convention are therefore applicable to the present case" is incorrect. It is also surprising that the court made such a statement, especially considering that the party seeking enforcement relied on the 1983 Riyadh Convention, and given its erroneous application in Case 1.

b. This is not the first time that the Supreme Court has overlooked the application of the 1983 Riyadh Convention in a case involving the enforcement of a Saudi judgment. In a case decided in 2016, almost two years after the Convention entered into force in Egypt, the Supreme Court referred to the 1952 Arab Judgments Convention to reject the enforceability of a Saudi judgment, again citing the lack of proper service (*Supreme Court, Appeal No. 11540 of 24 February 2016*).

3. Enforcement of Foreign Judgments and Service Requirement in Egypt

As a general rule, service of process under Egyptian law is considered a procedural matter that should be governed by the *lex fori* (Article 22 of the Civil Code. For an English translation, see Basedow *et al, op. cit.;* see also El Chazli, pp. 397, 402). In the context of foreign judgments, this means that the service of process or judgment is, in principle, governed by the law of the state of origin, subject, however, to considerations of public policy (see eg., *Supreme Court, Appeal No. 2014 of 20 March 2003*). Based on the case law of the Supreme Court,

the following features are noteworthy:

- Service by publication was considered sufficient for enforcement purposes if the court could confirm that it had been duly carried out in accordance with the law of the State of origin (*Supreme Court, Appeal No. 232 of 2 July 1964*).
- However, if it appears that the service by publication did not comply with the requirements of the foreign law, the regularity of the service will be denied (*Supreme Court of, Appeal No. 14777 of 15 December 2016* [service of summons]; *Appeal No. 1441 of 20 April 1999* [notification of judgment]).
- Conversely, the Court held that the service irregularities may be cured if the defendant voluntarily appears before the foreign court and presents arguments on the merits of the case (*Supreme Court, Appeal No. 18249 of April 13, 2008*).
- Merely asserting that service was made in accordance with the law of the country of origin is not sufficient. Egyptian courts are required to verify that the judgment debtor has been properly served in accordance with the law of the country of origin and that such service is not contrary to Egyptian public policy (*Supreme Court of Cassation, Appeal No. 558 of 29 June 1988*). This aspect can be particularly important when it appears that the judgment debtor had permanently left the State of origin at the time when the service was made (*Supreme Court, Appeal No. 8376 of 4 March 2010*; *Appeal No. 14235 of 1 January 2014*; *Appeal No. 1671 of 18 February 2016*).
- With regard to ensuring that the defendant has been duly served, the courts are not bound by any specific method imposed by Egyptian law; therefore, the conclusions made by the enforcing court as to the regularity of the service based on the findings of the foreign judgment and not disputed by the appellant may be accepted (*Supreme Court, Appeal No. 1136 of 28 November 1990*).
- Where an international convention applies, the rules for service set out in the convention must be complied with, even if they differ from the rules of domestic law. Failure to comply with the methods of service prescribed by the applicable convention would render the foreign judgment unenforceable (*Supreme Court, Appeal No. 137 of 8 March 1952*).
- The rules provided for by the conventions prevail, including the method of

determining whether proper service has been made (eg., the submission of a certificate that the parties were duly served with summons to appear before the proper authorities). Therefore, failure to comply with this rule would result in the rejection of the application for enforcement by the party seeking enforcement (*Supreme Court, Appeal No. 5039 of 15 November 2001*; *Appeal No. 3804 of 23 June 2010*).

4. Service under Conventions

Most of the bilateral and regional conventions ratified by Egypt contain provisions on the service of judicial documents. The Riyadh Convention is particularly noteworthy in this regard, as 18 of the 22 members of the League of Arab States are parties to it (see Elbalti, *op. cit.*, pp. 196-197). In addition, Egypt has been a party to the HCCH 1965 Service Convention since 1968.

The proliferation of these international instruments inevitably leads to the problem of conflict of conventions. This problem can be particularly acute in some cases, where as many as three competing instruments may come into play. This scenario often arises with some Arab countries, such as Tunisia or Morocco, with which Egypt is bound by (1) bilateral conventions, (2) a regional convention (namely the Riyadh Convention), and (3) a global convention (namely the HCCH Hague Service Convention).

In this context, the solution adopted by the Hague Convention deserves attention. Article 25 of the Convention provides that "[…] *this Convention shall not derogate from conventions containing provisions on matters governed by this Convention to which the Contracting States are or will become Parties*". However, the evaluation of this solution deserves a separate comment (for analyses on a similar issue regarding the HCCH 2019 Judgments Convention, see Elbalti, *op. cit.*, p. 206).