Reciprocity and the Enforcement of Foreign Judgments in Egypt – A Critical Assessment of a Recent Supreme Court Decision

I. Introduction

Reciprocity is probably one of the most controversial requirements in the field of the recognition and enforcement of foreign judgments. While its legitimacy appears to be on the wane (see Béligh Elbalti, "Reciprocity and the Recognition and Enforcement of Foreign Judgments: A Lot of Bark but Not Much Bite," 13 JPIL 1 (2017) 184), reciprocity can still strike hard – particularly when it is applied loosely and without sufficient consideration.

The case presented here, decided by the Egyptian Supreme Court (Appeal No. 11434 of 21 June 2025), provides a good illustration. Despite the Court's well-established case law imposing certain restrictions on the use of the reciprocity requirement, this recent judgment shows that, when not applied with the

necessary rigor, reciprocity can still produce significant effects that undermine the legitimate expectations of the parties.

II. Facts

The case concerned the enforcement of a Canadian divorce judgment rendered in Quebec, ordering the appellant (Y) to pay a specified sum of money with interest.

X, in whose favor the judgment was issued, sought to have the Canadian judgment enforced in Egypt. The Court of First Instance rejected the claim. X then appealed to the Court of Appeal, which overturned the first-instance judgment and ordered the enforcement of the Canadian decision.

Dissatisfied with this outcome, Y brought an appeal before the Supreme Court.

In support of his appeal, Y argued that the Court of Appeal had ordered the enforcement of the Canadian judgment without establishing the existence of any legislation in Canada permitting the enforcement of Egyptian judgments there, as required under Article 296.

III. The Ruling (Summary)

> *It is established in the case law of this Court that Article 296 of the Code of Civil Procedure makes clear that the rule is founded on the principle of reciprocity or mutual treatment. Accordingly, foreign judgments in Egypt must receive the same treatment that Egyptian judgments receive in the foreign country whose judgment is sought to be enforced. In this respect, the legislature limited the requirement to legislative reciprocity and did not require diplomatic reciprocity established by treaty or convention. The court must ascertain the existence of legislative reciprocity on its own initiative.*
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> *In the present case, the Court of Appeal ordered the enforcement of the Canadian decision on the basis that a foreign judgment may be relied upon before Egyptian courts so long as no Egyptian judgment between the same parties on the same matter has been issued and become enforceable, without determining whether any convention exists between Egypt and Canada concerning the enforcement of judgments that provides for reciprocity, as*

required under Article 296 of the Code of Civil Procedure.

This constitutes a violation of the law and requires that the judgment be quashed and the case remanded.

IV. Comments

The Court's decision raises significant concerns.

First, the Supreme Court appears to contradict itself. After reiterating its longstanding position that "diplomatic reciprocity" – that is, reciprocity established through a treaty – is not required under Egyptian law, it nevertheless held that reciprocity with Canada was not established because the Court of Appeal did not determine whether any convention with Canada exists. This is not the first time the Court has adopted such reasoning. In a previous case decided in 2015, the Supreme Court relied on a similar approach when evaluating the enforcement of a Palestinian judgment (*Appeal No. 16894 of 4 June 2015*). Such reasoning is difficult to reconcile with the Court's own affirmation that treaty-based reciprocity is irrelevant under Article 296.

Second, the Court's ruling is inconsistent not only with the prevailing view in the literature (for an overview, see Karim El Chazli, "Recognition and Enforcement of Foreign Decisions in Egypt," 15 *YBPIL* (2013/2014) 400–401), but also with the Court's prior stance affirming reciprocity on the basis of "legislative reciprocity". Under this approach, reciprocity exists if, according to the enforcement law of the State of origin, Egyptian judgments would be enforceable there. Indeed, in earlier cases, the Court conducted a comparative analysis of the enforcement requirements under the law of the State of origin and under Egyptian law, and concluded that reciprocity was satisfied when the two sets of requirements were broadly comparable (see, e.g., *Appeal No. 1136 of 28 November 1990*, admitting reciprocity with Yemen; *Appeal No. 633 of 26 February 2011* and *Appeal No. 3940 of 15 June 2020*, both admitting reciprocity with Palestine). In addition, in some cases involving the recognition or enforcement of judgments rendered in a country with which Egypt has not concluded any international convention, the Supreme Court did not examine the issue of reciprocity as required under Article 296 of the Code of Civil Procedure, nor did it invoke it *sua sponte* as the Court has

repeatedly affirmed. Instead, it directly examined the requirements for recognition or enforcement under the conditions laid down in Article 298 of the Code of Civil Procedure (see, e.g., *Appeal No. 2014 of 20 March 2003* regarding the enforcement of a New Jersey judgment ordering the payment of damages resulting from breach of contract; *Appeals No. 62 and 106 of 25 May 1993* regarding the recognition of a Californian divorce judgment. In both cases, however, recognition and enforcement were rejected, *inter alia*, on the ground of public policy).

Third, the Court's stance in this case is likely to create more problems than it solves. Even setting aside the contradiction noted above, the Court gave no indication on how "legislative reciprocity" should be established when the foreign judgment originates from a federated province or a state within a federal system, each having its own autonomous legal regime (on the difficulty of establishing reciprocity emanating from federal states, notably the United States, see Béligh Elbalti, "La Réciprocité en matière de réception des décisions étrangères en droit international privé tunisien – observations critiques de la décision de la Cour d'appel de Tunis n°37565 du 31 janvier 2013" 256/257 *Infos Juridiques* (mars-2018) 20 (Part I), 258/259, *Infos Juridiques* (avril-2018) 18 (Part II)).

The situation of Canada is particularly striking. In Quebec, where a civil-law approach prevails in the field of private international law, the rules on the recognition and enforcement of foreign judgments are comprehensively codified (see Gérald Goldstein, "The Recognition and Enforcement of Foreign Decisions in Québec," 15 *YBPIL* (2013/2014) 291) and differ substantially from those applicable in the common-law provinces (see Geneviève Saumier, "Recognition and Enforcement of Foreign Judgments in Canadian Common Law Provinces," 15 *YBPIL* (2013/2014) 313). If the Court insists on applying the criterion of "legislative reciprocity," how are Egyptian courts to assess reciprocity in relation to a province such as Quebec? Would it be sufficient that Egyptian judgments are enforceable in another Canadian province where enforcement is governed by common-law principles? Does it matter that, in the common-law provinces, recognition and enforcement are not codified and are largely based on case law? And if, as would be expected, "legislative reciprocity" had to be established by reference to Quebec law, would it be relevant that under Quebec law, reciprocity is not a requirement for the recognition and enforcement of foreign judgments at all? In this respect, Egyptian courts would be well advised to consider the

generous approach followed in Tunisia, whereby the Supreme Court established a presumption in favor of reciprocity, placing the burden on the party challenging enforcement to prove its non-existence (for details, see Béligh Elbalti, "La réciprocité en matière d'exequatur?: Quoi de nouveau?? Observations sous l'arrêt de la Cour de cassation n° 6608 du 13 mars 2014"published in *Arab Law Quarterly* (2025) as an online-first publication. For an overview from a comparative perspective in the MENA Arab jurisdictions, see Béligh Elbalti, "Perspective from the Arab World", *in* M. Weller et al. (eds.), *The HCCH 2019 Jugements Convention – Cornerstones, Prospects; Outlook* (Hart, 2023) 193-194).

Finally, this case, along with several others concerning the enforcement of foreign judgments, illustrates the difficulty of enforcing such judgments in Egypt in the absence of an applicable treaty (for recent examples, see *Appeal No. 25178 of 17 November 2024*, which rejected the enforcement of an Irish judgment on the ground of public policy, and *Appeal No. 3493 of 4 December 2024*, which rejected the enforcement of an Austrian judgment because the various conditions laid down in Article 298 were not satisfied). By contrast, where a bilateral convention exists, enforcement is generally somewhat easier (see, e.g., *Appeal No. 200 of 14 May 2005*, which allowed the enforcement of a French custody judgment pursuant to the bilateral convention between the two countries; but *contra*, *Appeal No. 719 of 8 October 2013*, which rejected the enforcement of a similar French judgment).

It must be admitted, however, that the conclusion of such a convention does not necessarily guarantee smoother enforcement (see, for instance, my previous comments on the enforcement of judgments rendered in Saudi Arabia and Kuwait, available on this Blog here and here).