The Egyptian Supreme Court and the (Mis)Identification of the Applicable International Conventions on Judicial Assistance: A Persistent Problem?



I. Introduction

The problem of the application and applicability of international conventions on judicial assistance in the MENA region generally, and in Egypt in particular, has been sometimes raised on this blog (see here and here). The problem stems from the fact that international conventions are either overlooked altogether or incorrectly applied. This is particularly troubling when a party expressly invokes the applicable convention, yet the courts fail to give it effect and instead apply a different instrument, especially an earlier convention that has been expressly superseded by the applicable one. The matter becomes even more serious when the same court repeats the same erroneous approach three times in the very same case, despite the explicit reference to the convention that should govern the matter. This is all the more striking given that the same court has applied that convention in other cases, sometimes, ironically, in circumstances in which it should not have done so.

The case discussed here, whose initial decision was previously reported on this blog (see here), provides a particularly clear illustration of this problem. In three successive decisions, the Egyptian Supreme Court (محكمة النقض/*maḥkamat an-naqḍ*)[(*)] failed to apply the correct instrument, namely the 1983 Riyadh Convention on Judicial Cooperation (hereafter, the 1983 Riyadh Convention) despite the fact that the party seeking enforcement had expressly invoked it and drawn the Court's attention to its applicability.

[(*)] *Although legal literature more commonly refers to the Egyptian Court as the "Court of Cassation", I prefer the term "Supreme Court" and will use it consistently throughout, in keeping with my previous posts on this blog and other publications.*

II. Facts & Rulings

1. Underlying facts and process

The Supreme Court's decisions provide scant information about the factual background of the case. All that is reported is that X (the wife, whose nationality is unclear) sought to enforce in Egypt a Saudi judgment awarding her custody of her children against Y (the husband, whose nationality is also unclear but who was presumably Egyptian). The Minister of Justice and the Minister of Interior were also joined as co-defendants. However, as their involvement is not relevant to the issues discussed here, and they do not feature in the subsequent decisions, they will be left out of the following account.

All the decisions reported here indicate that X based her claim on the 1983 Riyadh Convention, to which both Egypt and Saudi Arabia are contracting states.

Both the court of first instance and the court of appeal declared the Saudi judgment enforceable. Dissatisfied with this outcome, Y appealed to the Supreme Court. What followed was a judicial saga that culminated in three Supreme Court decisions in the same case.

2. First Appeal: Supreme Court Ruling of 14 November 2023

a) Y's claim

Y challenged the enforcement of the Saudi judgment, arguing principally that he had not been notified of the proceedings in which the judgment was rendered. He maintained that he had left Saudi Arabia before the claim was filed, as evidenced by the documents he submitted. He therefore argued that the appealed decision was defective insofar as it rejected his substantive defense on the ground that service of process had been duly effected.

It is worth noting that, as consistently indicated in the decisions, Y appears to have left Saudi Arabia on 30 June 2020, whereas the Saudi judgment was rendered only on 12 July 2020.

b) Ruling of the Supreme Court

The Supreme Court allowed the appeal, quashed the contested judgment and remanded the case for reconsideration, for the following reasons.

First, the Court set out the applicable legal framework. It held that, under Article 301 of the Egyptian Code of Civil Procedure, the domestic rules governing the enforcement of foreign judgments do not prejudice the provisions of international conventions applicable between Egypt and other States. It noted that Egypt had approved the *Convention on the Enforcement of Judgments issued by the Council of the League of Arab States* (hereafter, the 1952 LAS Convention) by Law No. 29 of 1954 and deposited its instrument of ratification with the General Secretariat of the League on 25 July 1954. Saudi Arabia had signed the Convention on 23 May 1953. Accordingly, the Court held that the 1952 LAS Convention was the applicable instrument in this case.

The Court then referred to Article 2(b) of the Convention, which requires that the parties against whom enforcement is sought have been duly served. It also invoked Article 22 of the Egyptian Civil Code, under which procedural matters are governed by the law of the State in which the relevant proceedings are conducted. Consequently, the validity of service in the Saudi proceedings had to be assessed in accordance with Saudi procedural law. The Court further recalled

that Article 5(2) of the Convention requires an official certificate confirming that the judgment was duly served, while Article 5(3) requires a certificate from the competent authorities establishing that the judgment is final and enforceable.

Applying this legal framework, the Court considered that Y had raised a substantive challenge to the validity of service. In particular, it noted his argument that he had not been notified of the proceedings in which the judgment sought to be enforced had been rendered, since he had left Saudi Arabia and returned to Egypt on 30 June 2020, before the claim was filed, a fact he sought to establish through his passport and official movement certificate. The Court also referred to his argument that the alleged service through his mobile phone was ineffective, as the SIM card in question had been inactive since his departure from Saudi Arabia. The Court further observed that the Saudi judgment, rendered on 12 July 2020, contained no indication that Y had appeared before the court.

Accordingly, the Court held that the appealed decision had failed to adequately address Y's defense. In particular, it had not established whether the service procedures undertaken in Saudi Arabia had been examined or whether service had been effected in accordance with the applicable Saudi procedural rules. The appealed decision therefore lacked an adequate basis and had to be quashed and remanded.

3. Second Appeal: Supreme Court Ruling of 19 November 2025

The court of remand maintained its position and again allowed enforcement of the Saudi judgment. Dissatisfied with this outcome, Y lodged a second appeal before the Supreme Court.

a) Y's claim

While substantially reiterating the arguments advanced in his first appeal, Y further alleged that X had misled the rendering Saudi court by submitting a forged printout of passport records. He also maintained that the foreign judgment had been rendered after he had permanently left Saudi Arabia.

b) Ruling of the Supreme Court

Once again, the Supreme Court allowed the appeal.

First, the Court reiterated, almost verbatim, the legal framework set out in its first decision.

Applying that framework, the Court noted that the appelaed decision had allowed enforcement of the Saudi judgment on the ground that the judgment indicated that it had been rendered in Y's presence, as he had allegedly been personally served twice and had also been notified of the link to attend the remote hearing.

The Supreme Court nevertheless found that the appealed decision had failed to address Y's defense, which, if substantiated, could have affected the outcome of the case. In the Court's view, the court of remand had also failed to comply with the binding effect of the Supreme Court's previous judgment, which required it to examine Y's defense and address the evidentiary significance of the documents on which he relied. Instead, the court of remand had merely reiterated that Y had been duly served with notice of the proceedings and that the judgment had therefore been rendered in his presence. This was so despite the absence from the case file of any evidence that X had submitted the two certificates required to establish, respectively, that the judgment sought to be enforced had been duly served and that it had acquired the force of res judicata and become final and enforceable.

The Supreme Court therefore concluded that the appealed decision was vitiated by inadequate reasoning, which justified quashing it. The Court further noted that, since this was the second appeal before it, Egyptian procedural rules required it, upon quashing the appealed decision, to proceed to determine the merits of the case. However, as the case was not yet ready for determination, the Court scheduled a further hearing at which the parties could present their arguments.

4. The Final Stage: The Supreme Court Ruling of 1 April 2026

The Supreme Court held a further hearing, at which the parties maintained their respective arguments. The Court then proceeded to rule on the case.

First, it restated the facts of the case and summarized its procedural history, before concluding that the case was now ready for determination on the merits.

Once again, the Supreme Court repeated almost verbatim the general legal framework set out in its first decision, as it had done in its second decision. It also reproduced almost word for word the reasoning underlying its decision to quash the judgment under appeal. The Court then concluded that the action should be dismissed and refused to enforce the Saudi judgment in Egypt.

III. Comments

Given the limited information provided about the facts of the case, it is difficult to assess the overall outcome. However, certain factual elements raise questions about the way in which the Supreme Court addressed the regularity of service. In particular, the claim before the Saudi Court was allegedly filed after Y had permanently left Saudi Arabia on 30 June 2020, yet the foreign judgment was rendered only shortly thereafter, on 12 July 2020. The short interval between Y's departure and the date of the judgment, together with the discrepancy between the finding in the appealed decision that Y had been personally served twice and his own allegations, makes it difficult to establish whether the proceedings were instituted before or after his departure. This point, which should have been clarified by the Supreme Court, will not be pursued further here (for an overview of the rules governing service as a requirement for the enforcement of foreign judgments in Egypt, see my previous post here).

Instead, this comment focuses on a different issue that deserves particular attention. This concerns the application of the 1952 LAS Convention and the Supreme Court's failure to apply the 1983 Riyadh Convention, despite the fact that all three decisions expressly acknowledge that X had relied on it. The Supreme Court's failure to apply the correct instrument on three successive occasions in the same case is particularly concerning.

In this regard, it is worth recalling that Egypt acceded to the 1983 Riyadh Convention pursuant to Presidential Decree No. 278 of 2014 of 19 August 2014, published in the Official Gazette on 4 December 2014. The Convention was also made applicable by Ministerial Decree No. 43 of 2014 of 25 September 2014, published in the same issue of the Official Gazette, with effect from 8 October 2014. Moreover, Article 72 of the Riyadh Convention expressly provides that it replaces the 1952 LAS Convention, as well as other related conventions, including

the 1952 LAS Convention on Judicial Notifications and Letters Rogatory, in relations between States that have ratified the Riyadh Convention. What makes the Supreme Court's approach particularly striking is that the Court is clearly not unaware of the existence of the 1983 Riyadh Convention. In other cases, the Court has referred to this instrument and applied its provisions. Somewhat ironically, however, in most of those cases the Convention was not applicable because the States concerned had signed, but not ratified, it.

One possible explanation for this situation is that the Supreme Court appears to rely on a standardized model of reasoning, particularly when setting out the applicable legal framework. The passage reproduced above, concerning the applicability of the 1952 LAS Convention and even the relevant legal provisions, can be found in other decisions concerning the enforcement of Saudi judgments rendered both before and after the ratification of the Riyadh Convention, with virtually identical wording, sometimes with only minor modifications. One might therefore suggest that it is perhaps time for the Supreme Court to update its standardized model of reasoning, at least by replacing references to the 1952 LAS Convention with references to the 1983 Riyadh Convention.

(□) Previous Posts on Egyptian PIL:

- Egyptian Supreme Court Enforces Italian Judgment: The Right Outcome despite Some Reservations
- Zamzam on Egyptian Private International Law (in Arabic): Towards Reviving the Golden Age of Egyptian Private International Law
- Refusal to Enforce in Egypt of a Californian (U.S.) Judgment for Lack of Reciprocity: What Has Gotten into the Egyptian Supreme Court?
- Reciprocity and the Enforcement of Foreign Judgments in Egypt – A Critical Assessment of a Recent Supreme Court Decision
- Enforcing Foreign Judgments in Egypt: A Critical Examination of Two Recent Egyptian Supreme Court Cases
- Egyptian Supreme Court on the Enforcement of Foreign Judgments – Special Focus on the Service Requirement
- Egyptian Court of Cassation on the application of the Hague Service Convention