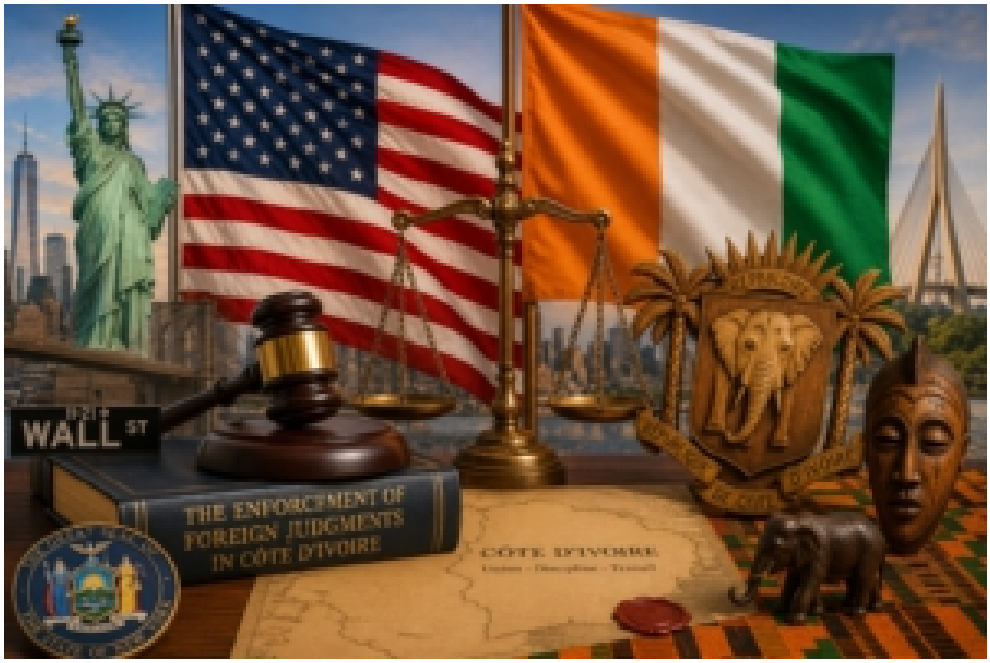
Enforcement of New York Judgments in Côte d'Ivoire: Insights from a Recent Decision of the Abidjan Commercial Court



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Many thanks to Boris Awa (Kigali Independent University ULK, Kigali, Rwanda) for the tip-off

I. Introduction

The recognition and enforcement of foreign judgments in Francophone African countries remains a largely underexplored subject in the literature, including in French-language scholarship. The laws of many countries have not yet been systematically analysed from a comparative perspective, and in several jurisdictions access to even the most basic information is itself a considerable challenge. This note aims to raise awareness of African private international law,

in particular in Francophone Sub-Saharan African countries. The case discussed here concerns the enforcement of a New York judgment in Côte d'Ivoire. It provides an opportunity to present the Ivorian system of recognition and enforcement of foreign judgments and to examine some of the key issues addressed by the Ivorian court.

II. Facts and Procedural Developments

The case involved a dispute between X (an American company) and Y (an Ivorian company). The American company sought the enforcement in Côte d'Ivoire of a U.S. judgment rendered by the New York Supreme Court, ordering Y to pay a certain sum of money. To that end, X brought an action before the Abidjan Commercial Court.

In support of its application, X argued that the foreign judgment satisfied the legal requirements for enforcement under Ivorian law, in particular that:

- the foreign judgment was rendered by a court having jurisdiction under New York law;
- the decision had become final and irrevocable (*passée en force de chose jugée*), as evidenced by a certificate of non-appeal;
- the dispute arose from the non-performance of a commercial contract and did not fall within the exclusive jurisdiction of Ivorian courts;
- reciprocity was established, since Ivorian judgments may be enforced in the United States, on the ground that both the United States and Côte d'Ivoire are contracting states to the 1993 HCCH Adoption Convention.

By an interlocutory default judgment (*jugement de défaut avant dire droit*) dated 6 June 2024, the Court invited X to supplement its application, finding in particular that

- it had not been established that the laws of the State of New York provide that a mere certificate of non-appeal is sufficient to render a judgment enforceable;
- given that service of the foreign judgment on Y had been effected by electronic means, it had not been demonstrated that, under New York

law, service of a judgment may validly be effected by electronic mail.

Subsequently, X brought a new action, this time against the Public Prosecutor attached to the Abidjan Court of First Instance, seeking enforcement of the same foreign judgment.

By an interlocutory civil judgment rendered after adversarial proceedings (*jugement contradictoire avant dire droit*) dated 30 October 2025, the Abidjan Commercial Court again invited X to submit:

- the complete original judgment in English, together with a French translation prepared by a sworn translator; and
- evidence that the foreign judgment had become final and binding and that it had been duly served on the judgment debtor.

X was also invited to summon Y to join the proceedings by way of compulsory intervention (*intervention forcée*).

X complied with the Court's requests. Following Y's intervention, Y contested the enforcement of the American judgment, arguing *inter alia* that reciprocity was not established with the United States. In response, X contended that a convention existed between the two countries, arguably referring to the 1993 HCCH Adoption Convention.

III. Ruling

By a judgment rendered after adversarial proceedings (*jugement contradictoire*) dated 15 January 2026, the Abidjan Commercial Court declared the American judgment enforceable in Côte d'Ivoire, ruling as follows (summary).

First, the Court recalled the legal regime governing the enforcement of foreign judgments in Côte d'Ivoire, referring to the relevant statutory provisions (see below, Comment).

Applying this framework to the case at hand, the Court found, upon examination of all the documents in the case file, that:

- Y had been duly notified of the existence of the proceedings conducted in

the United States that resulted in the judgment at issue;
- the time limits for lodging an appeal had expired; and
- no element in the case file established that judgments rendered in Côte d'Ivoire could not be enforced in the United States.

IV. Comments

1. Applicable framework

The enforcement (*exequatur*) of foreign judgments in Côte d'Ivoire is governed by Articles 345 to 350 of the 1972 Code of Civil, Commercial and Administrative Procedure (CCCAP), which establishes the legal framework under which foreign judgments may be declared enforceable in Côte d'Ivoire. The applicable provisions may be succinctly summarized as follows:

Article 345 lays down the principle that foreign judgments have no legal effect in Côte d'Ivoire unless they are declared enforceable by an exequatur decision.

Article 346 determines both the nature of the exequatur procedure and the court having jurisdiction to hear applications for enforcement.

Articles 347 and 348 set out the conditions that must be satisfied for a foreign judgment to be declared enforceable in Côte d'Ivoire.

Article 347 specifies the substantive and procedural requirements, which include in particular that:

- the foreign judgment was rendered by a court having jurisdiction under the law of the State of origin;
- it has become final and enforceable under that law;
- it was rendered in proceedings in which the defendant was properly summoned and afforded an opportunity to present a defence;
- the dispute does not fall within the exclusive jurisdiction of Ivorian courts;
- the foreign judgment does not conflict with a prior final judgment rendered by an Ivorian court between the same parties concerning the same cause and object; and

- its does not violate Ivorian public policy.

Article 348 adds reciprocity as an additional requirement, providing that foreign judgments may be enforced in Côte d'Ivoire only if judgments rendered in Côte d'Ivoire may likewise be enforced in the State of origin.

Finally, decisions granting or refusing exequatur are subject to the ordinary remedies available under domestic law (Article 349), and, once declared enforceable, foreign judgments are executed in Côte d'Ivoire in accordance with Ivorian law (Article 350).

2. Significance of the case

The case discussed here provides several significant insights into the manner in which foreign judgments may be enforced in Côte d'Ivoire.

Two are of particular relevance.

a) Exclusive jurisdiction.

First, contrary to what is often asserted in the literature, Ivorian courts do not necessarily claim exclusive jurisdiction in disputes involving Ivorian nationals. In this respect, it is commonly submitted that Articles 14 and 15 of the Ivorian Civil Code, inherited from the French Civil Code, have traditionally been interpreted as conferring exclusive jurisdiction on Ivorian courts. Accordingly, the exclusive character of Articles 14 and 15 of the Ivorian Civil Code would prevent the enforcement of foreign judgments rendered against Ivorian defendants.

Interestingly, the present case shows that the Ivorian nationality of the judgment debtor neither prevented the enforcement of the American judgment on grounds of exclusive jurisdiction nor gave rise to any argument to that effect by the parties.

b) Reciprocity

The second concerns the reciprocity requirement and its operation in Côte d'Ivoire.

The commented case is consistent with the available judicial practice, according to which the following elements may be identified:

i) Enforcement does not depend on the existence of a treaty between Côte d'Ivoire and the rendering State. Accordingly, the absence of a treaty does not lead to the refusal of enforcement of foreign judgments in Côte d'Ivoire. Several cases, including the one presented here, show that even in the absence of a treaty, foreign judgments have been declared enforceable.

ii) Reciprocity requires a showing that judgments rendered in Côte d'Ivoire may be enforced in the rendering State. This does not depend on demonstrating that the courts of the State of origin have in fact enforced an Ivorian judgment (*de facto* reciprocity). Available case law, however, shows that the party seeking enforcement sometimes submits such decisions as evidence to establish reciprocity.

In the present case, interestingly, the American company argued that a treaty exists between Côte d'Ivoire and the United States, referring to the HCCH 1993 Adoption Convention. This argument is not really convincing for two reasons: (i) reliance on the Convention is misplaced given its limited scope, which is confined to adoption matters; and (ii) even assuming that the Convention were applicable, it does not address the enforcement of adoption decisions as such, but instead it focuses on recognition.

Despite the parties' arguments concerning the relevance of the existence of a treaty for the purpose of establishing reciprocity, the Abidjan Commercial Court merely held that no element in the case file shows that Ivorian judgments could not be declared enforceable in the United States. While the Court adopted a relatively liberal approach, it must be acknowledged that its position is not entirely clear. In particular, it remains uncertain whether the Court sought to treat a federal State such as the United States, which is composed of autonomous legal units with their own legal and judicial systems, as a unified legal system. In line with the Court's position, one may wonder whether, for the purpose of challenging reciprocity, it would be sufficient to show that an Ivorian judgment

was denied enforcement in a particular U.S. state, given that some states do require reciprocity, albeit as a discretionary ground for refusing enforcement. In any event, the available judicial practice, together with the present case, suggests that, despite certain remaining uncertainties (including, *inter alia*, the question of burden of proof), reciprocity does not appear to constitute a serious practical hurdle in Côte d'Ivoire.

Investment Awards vs Sovereign Immunity: Navigating the Enforcement Maze

By Cara North, Counsel, Ashurst

The intersection of foreign State immunity and the enforcement of international arbitral awards has been a hotly contested issues in recent years. First the question was whether a State has waived immunity from court processes concerning recognition and enforcement of arbitral awards by ratifying the *1965 Convention of Settlement of Investment Disputes* (**ICSID Convention**) – to which the answer has been yes in Australia and the England and Wales (among other jurisdictions). More recently, the question has been whether a State's ratification of the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (**New York Convention**) constitutes an implicit waiver of sovereign immunity, to which the High Court of Australia most recently held no.

In *CCDM Holdings, LLC v The Republic of India* [2026] HCA 9, the High Court of Australia unanimously held that ratification of the New York Convention does not, of itself, waive foreign State immunity under the *Foreign States Immunities Act 1985* (Cth). The decision aligns Australia with the current position in the United States, Canada, and England and Wales, reinforcing an emerging common law consensus in that regard.

Factual and Procedural Background

The dispute arose from an investment by Mauritian companies in an Indian Government-owned corporation. In 2011, the Indian Government annulled the underlying agreement on public policy and national security grounds. The investors commenced arbitral proceedings against India under Article 8 of the India-Mauritius bilateral investment treaty (BIT), which contemplated ICSID arbitration. As India is not a Contracting State to the ICSID Convention, the arbitration proceeded under UNCITRAL Rules.

In 2020, the tribunal rendered an award of US$111 million. The award creditors sought enforcement in Australia under the New York Convention. India resisted, invoking immunity under section 9 of the *Foreign States Immunities Act 1985* (Cth).

The Waiver Question in the Lower Courts

At first instance, Jackman J held that India had waived immunity by ratifying the New York Convention, finding a "clear" and "unmistakable" implication—particularly from Article III, read with Articles I(1) and II(1)—that ratification involved waiver and submission to the jurisdiction of other Contracting States.

On appeal, the Full Federal Court did not decide the waiver question definitively. It assumed ratification constituted a waiver, but held that India's reservation—limiting the Convention to disputes "considered commercial under the Law of India"—circumscribed any such waiver. Finding the dispute was not commercial under Indian law, it held that India had not waived immunity in respect of the award.

The High Court's Analysis

The High Court addressed the fundamental question directly: whether ratification of the New York Convention is capable of constituting a waiver of foreign State immunity.

The governing principle is that any waiver in an international agreement must be "clear and unmistakeable", derived from the express words of the agreement, including necessary implications.

The High Court observed that the text of the New York Convention contains no express reference to foreign State immunity. The *travaux préparatoires* revealed an intention to preserve immunity in the courts of other States—a consideration militating against implied waiver.

Crucially, the Court examined Article III, which requires Contracting States to recognise awards as binding and enforce them "in accordance with the rules of procedure of the territory where the award is relied upon". The High Court held this phrase encompasses foreign State immunity rules, qualifying the enforcement obligation by reference to immunity rules in the relevant forum.

The Court also considered subsequent State practice under Article 31(3)(b) of the *Vienna Convention on the Law of Treaties*. It found that decisions from the United States, Canada, and England and Wales pointed in the opposite direction: ratification of the New York Convention is not, by itself, a sufficient act of waiver.

Distinguishing the ICSID Convention

The appellants sought to draw an analogy with *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl* [2023] HCA 11, where Spain was held to have waived immunity by ratifying the ICSID Convention. The High Court rejected this analogy, identifying material distinctions:

- First, the ICSID Convention is expressly concerned with disputes to which a State is a party, and its *travaux préparatoires* addressed foreign State immunity in detail.
- Second, Article 55 of the ICSID Convention preserves immunity only from execution—implying waiver of immunity from recognition and enforcement. Article III of the New York Convention supports preservation of immunity from jurisdiction altogether.
- Third, the International Law Commission materials relied upon by the appellants did not equate the two Conventions in any dispositive way.

Implications for Enforcement Against States

CCDM Holdings provides an authoritative demarcation between the two principal conventions. For ICSID awards, *Kingdom of Spain* establishes that enforcement

against a Contracting State in Australia will not be barred by claims of immunity from jurisdiction. For non-ICSID awards—including investment treaty awards under UNCITRAL or other rules—enforcement against an unwilling State under the New York Convention is foreclosed absent clear and unmistakeable waiver.

Investors must give careful consideration to the availability of ICSID arbitration when contracting with States. Where unavailable, parties should seek clear waivers of immunity if enforcement in Australia or similar jurisdictions is contemplated.

Conclusion

The High Court's unanimous decision brings welcome clarity. Ratification of the New York Convention does not, of itself, waive foreign State immunity, aligning Australia with the United States, Canada, and (subject to the pending appeal) England and Wales.

For practitioners in cross-border dispute resolution, the message is clear: the choice of arbitral regime and the presence of an express waiver are matters of critical importance warranting attention from the earliest stages of investment planning.

Courtroom Attendance as a Forum Conveniens Factor in Hamilton v Barrow

*This post is written by **Timon Milan Solár**, Doctoral researcher, Faculty of Law, Trnava University, Slovakia.*

In October 2025, the High Court of England and Wales (King's Bench Division) handed down its judgment in Hamilton v Barrow [2025] EWHC 2593 (KB). The case concerned a failed unregulated investment scheme that collapsed in 2017,

leaving investors without the possibility of recovering their investments, which ranged from £2,930 to £410,969. At first glance, the decision discusses important procedural questions, including abuse of process and champerty. However, on closer inspection, it also raises an interesting issue of English private international law that has gone overlooked. Can courtroom attendance be a factor in the forum conveniens test?

Facts of the Case

The defendants were all allegedly involved in a fraudulent investment scheme, under which investors from all over the world paid money to a 'currency club'. Those funds were then supposed to be traded in foreign currency by one of the defendants who was based in Malaysia. Following the collapse of the scheme, the aggrieved investors alleged that the defendants made fraudulent misrepresentations to obtain investments and that the defendants were in breach of contract in their handling of the scheme. It was alleged that the currency club operated as a 'Ponzi' scheme and defrauded the investors.

This was a follow-on action arising from a successful test case by the claimant, a former English solicitor residing in Cyprus, against three of the present defendants. The claimant has now brought proceedings against a wider group of 12 defendants, acting under 101 separate assignments from other investors. The assignments provided that the assignors are entitled to 60% of the proceeds from the litigation.

Legal Issues

At this stage, the High Court was tasked with answering multiple preliminary legal issues, summarised by the judge (at para 15) as follows:

- Are the courts of England and Wales the appropriate forum for the trial (ie, is England and Wales the *forum conveniens*)?
- Are the assignments to the claimant void for being champertous agreements ('meaning the claimant has no title to bring the claim')?
- Are the proceedings an abuse of process?
- Should the claims against some of the defendants be summarily struck out?
- Should the claimant be allowed to amend his Particulars of Claim?

The Court ruled for the claimant, allowing the claim to proceed. A substantial part of the judgment related to the champerty and abuse of process issues. Looking at the case as a whole, the judge held that the assignments were not void as being champertous, nor did the proceedings constitute an oppressive abuse of process. On the contrary, voiding the assignments would deny the assignors an opportunity to be heard by a court, which the judge refused to allow given the *prima facie* evidence of fraud (at para 123).

Importantly, from a conflict of laws perspective, the interesting issue remains the Court's application of the forum conveniens test.

Forum Conveniens

Setting out the relevant provisions of the forum conveniens test, the judge cited Lord Briggs's judgment in *Vedanta Resources Plc v Lungowe* [2019] UKSC 20, which in turn refers to Lord Goff's speech in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 (HL): 'The task of the court is to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice…'. This includes the crucial consideration of all factors that connect the claim with a particular jurisdiction.

The judge then moved to his consideration of the proper forum for this litigation. It was submitted by multiple defendants that Malaysia rather than England is the forum conveniens. Ultimately, the judge concluded that the appropriate forum is England, for seven listed reasons (at para 70):

- The claimant has already conducted a trial in England, is familiar with the forum, and has family in London who could provide him with accommodation during the trial; he would also lack the capacity to pursue this case in Malaysia;
- More than half of the key witnesses, the assignors, are located in the United Kingdom, whilst none in Malaysia;
- Only 2 of the 12 defendants are outside the United Kingdom and prefer Malaysia as the forum;
- The claimant's three important witnesses all appear to be located in England and Wales and most of the claimant's documentary evidence is available and in electronic form;
- Most of the participants in the trial will be English speakers, documents

will be largely in English, and it does not appear that any participants speak Malay;
- Whilst there may be some difficulties in obtaining Malaysian banking material, this would not be impossible should the trial proceed in England, and the claimant has already shown that he was successful in obtaining Malaysian bank materials from HSBC Global; other banks can be approached in a similar way.

The final factor listed by the judge, however, introduces a rather unusual consideration of the forum conveniens test. At point (g), the judge noted:

'although I do not give significant weight to this factor and the claimant did not rely on it, I note that a significant number of people attended the hearing and sat in the public gallery. This suggests that there is significant active interest in these proceedings from people resident in the United Kingdom.'

Discussion

Reliance on courtroom attendance in the judge's forum conveniens analysis should strike every conflict of laws scholar or practitioner. It may appear benign; after all, the judge explicitly stated that he did not give that factor significant weight and it was not pleaded by the claimant. In hindsight, however, what the judge was essentially doing was considering a public, rather than a private, interest under the forum conveniens test. Indeed, this is an approach taken on the other side of the Atlantic, where the United States courts regularly take public interest factors into account. In this regard, the English High Court's reasoning seems implicitly analogous to the Supreme Court of the United States's decision in *Gulf Oil Corp v Gilbert*, 330 U.S. 501 (1947), where Justice Jackson opined that the test should also take into account public considerations such as holding the trial within the view and reach of the affected persons or having localised controversies decided at home. The High Court treated the interest of the members of the English public as somewhat justifying holding the trial in England rather than in Malaysia. It is unfortunate that the judge did not elaborate further on why noting the public attendance should matter.

Crucially, considering public interest factors under the *Spiliada* test was decidedly rejected in England by the highest judicial authority in *Lubbe v Cape Plc* [2000] 1 WLR 1545 (HL). As Lord Hope held (at para 53):

'…if the interests of all parties and the ends of justice require that the action in this country should be stayed, a stay ought to be granted however desirable it may be on grounds of public interest or public policy that the action should be tried here.'

Considering the interest of the people residing in the United Kingdom in the litigation seems to be in clear contradiction with this ruling.

Not only does such an approach represent a doctrinal problem, its relevance for determining an appropriate forum seems questionable notwithstanding the well-established precedent. The investment club operated worldwide, and evidence suggested that there were thousands of investors from various countries. The proposition that the United Kingdom audience possesses any uniquely stronger active interest in the proceedings than an audience elsewhere is highly questionable. While this factor may have appeared to point clearly to England when contrasted solely against Malaysia (to which even the traditional connecting factors were missing), applying this logic to less clear-cut cases could easily lead to arbitrary results.

Conclusion

The judgment in *Hamilton v Barrow* should not be understood as an authority bringing public interest factors into the *Spiliada* test. Indeed, the judge tried to downplay its significance for the forum conveniens calculus. The other connecting factors the judge relied on, particularly the location of litigants and witnesses, are non-controversial and were sufficient on their own to justify holding the trial in England in the absence of other factors pointing towards Malaysia. Nevertheless, the mere mention of the public interest in the trial is problematic. Forum conveniens being a discretionary doctrine, it is not necessarily clear how the overall balance of connecting factors plays out when the judge looks at the case 'holistically'. Any creeping in of public interest factors should therefore be viewed with scepticism. The law is clear on rejecting public interest factors from the *Spiliada* analysis. Such a structural change would need to come from the highest authority, an intervention which appears unlikely.

Greenpeace Anti-SLAPP Suit Blocked by International Antisuit Injunction

*This post was written by **Hannah Buxbaum**, Martin Luther King Jr. Professor of Law, UC Davis School of Law. The post is cross-posted from the **Transnational Litigation Blog** with kind permission.*

In 2019, Energy Transfer, the developer of the Dakota Access Pipeline, sued Greenpeace International, a Dutch foundation, in North Dakota state court. Last year, Greenpeace responded with an anti-SLAPP (Strategic Litigation Against Public Participation) lawsuit against Energy Transfer in Dutch court. In the latest twist in this lengthy dispute, the North Dakota Supreme Court issued an antisuit injunction last week blocking (partially) that anti-SLAPP suit.

The injunction is unusual in two respects. First, it does not actually bar Greenpeace from pursuing the Dutch action; rather, it purports to limit the issues that Greenpeace can raise in that litigation. Second, it was entered after judgment had already been reached in the North Dakota lawsuit.

Background

In 2016, the planned construction of the 1,000-mile Dakota Access oil pipeline engendered significant and sometimes violent protests near the Standing Rock Sioux Reservation in North Dakota. Greenpeace International was among the many civil society organizations that advocated against the pipeline project.

The U.S. Litigation

In 2019, Energy Transfer L.P. sued Greenpeace and its two U.S. affiliates, along with other environmental rights groups, in federal court in North Dakota. Energy Transfer alleged that Greenpeace had engaged in criminal activity violating the

Racketeer Influenced and Corrupt Organizations Act (RICO). It also asked the court to exercise supplemental jurisdiction over a range of additional state law claims. This lawsuit was dismissed in its entirety for failure to state a claim—the racketeering claims with prejudice, and the state law claims without prejudice.

A week later, Energy Transfer filed a second lawsuit in North Dakota state court alleging defamation, tortious interference with business, and conspiracy under state law. On March 19, 2025, a jury found Greenpeace liable, concluding that it had supported the protests that delayed construction of the pipeline. It awarded Energy Transfer more than $650 million in compensatory and exemplary damages. In February 2026, the trial court finalized the judgment in Energy Transfer's favor, though it reduced the total damages to $345 million. Greenpeace is currently seeking a new trial in that case.

The Netherlands Litigation

Greenpeace characterizes both the proceedings in North Dakota federal court and the proceedings in North Dakota state court as SLAPP suits. It contends that Energy Transfer filed these claims in order to block Greenpeace from exercising its right to participate in public debate regarding the pipeline. In July 2024, it sent Energy Transfer a notice of liability stating that the U.S. litigation constituted an abuse of its rights under Dutch and EU anti-SLAPP law. It demanded that Energy Transfer withdraw its U.S. claims against Greenpeace and "accept liability and responsibility for payment of all damage (including costs)" that Greenpeace suffered as a result of the proceedings.

Energy Transfer did not agree to these demands, and in February 2025, shortly before trial began in the North Dakota case, Greenpeace filed a summons initiating litigation in the District Court of Amsterdam. It seeks compensation for costs and damages, including reputational damage, and a declaratory judgment that Energy Transfer acted tortiously and abused Greenpeace's rights by commencing the U.S. lawsuits.

Greenpeace's suit in the Netherlands invokes the EU's Anti-SLAPP Directive, which entered into force in May 2024. The goal of the Directive is to protect journalists and civil society actors from "manifestly unfounded claims or abusive court proceedings" initiated in order to chill their participation in public debate.

While the Directive's primary objective was to address SLAPP suits initiated in European courts, it specifically recognizes and seeks to mitigate the threat of SLAPP suits brought in courts outside the EU against EU-based defendants. First, it includes an anti-enforcement provision (Article 16), which provides that a judgment rendered against an EU resident by a non-EU court can be denied recognition and enforcement if the foreign proceedings are deemed "manifestly unfounded or abusive under the law of the Member State in which recognition or enforcement is sought."

Second, it creates a jurisdictional basis for claims initiated by an EU person targeted by a third-country SLAPP suit (Article 17). In the case of abusive proceedings, such a person "may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third country." Such claims can be initiated before a decision has been rendered or become final in the foreign proceeding.

Although the deadline for EU member states to implement the Directive within their national legal systems has passed, it has not yet been fully transposed across the EU. Nevertheless, the Dutch Ministry of Justice and Security has stated that Dutch private international law already permits the exercise of jurisdiction in anti-SLAPP claims involving a third-country proceeding. Greenpeace's anti-SLAPP claims against Energy Transfer are based on Dutch civil law.

The Antisuit Injunction

Five months after Greenpeace initiated its lawsuit in Amsterdam—and after the North Dakota state lawsuit had resulted in a jury verdict against Greenpeace—Energy Transfer filed a motion in the North Dakota court seeking an antisuit injunction prohibiting Greenpeace from proceeding with the Dutch anti-SLAPP suit.

Whether and under what circumstances a state court may issue an international antisuit injunction was apparently a matter of first impression in North Dakota. Given the lack of precedent, the state district court turned for guidance to federal law on the issuance of such injunctions. (Oddly, it relied not on Eighth Circuit precedent, but on a district court decision from another circuit.) The framework it

chose laid out a three-step analysis, requiring the court to consider:

(1) Whether the parties and issues in the U.S. proceeding and the foreign proceeding are the same;

(2) Whether the foreign litigation would (a) frustrate a policy in the enjoining forum; (b) be vexatious; (c) threaten the enjoining court's *in rem* or *quasi in rem* jurisdiction; or (d) prejudice other equitable considerations; and

(3) Whether principles of comity counsel against an injunction.

Applying this framework, the district court denied Energy Transfer's motion for an antisuit injunction. Energy Transfer then petitioned the North Dakota Supreme Court for supervisory review. That court granted review and concluded that the district court had abused its discretion by misapplying the legal framework. Following the same framework, it concluded that an antisuit injunction was justified.

Although the North Dakota Supreme Court grappled with the challenges presented by anti-SLAPP litigation, the court's analysis did not adhere very closely to the test it purported to adopt.

Threshold Question: Identity of Issues

As a threshold matter, the party seeking an antisuit injunction must establish that the issues at stake in the foreign proceeding and the U.S. proceeding are substantially the same, such that the outcome of the latter would dispose of the former. That was not the case here. As the district court had recognized, while the two proceedings arose from the same activities, they raised different issues.

The core of the Dutch proceeding was a claim that was not at issue in the U.S. proceeding, since North Dakota law does not have an anti-SLAPP law. Moreover, the Dutch lawsuit involved allegations that Energy Transfer had defamed Greenpeace, based largely on statements the company made in and in connection with the failed RICO litigation. The question of defamatory conduct by Energy Transfer was not at issue in the North Dakota proceeding, since Greenpeace had made no counterclaims there.

The state Supreme Court nevertheless concluded that the issues were

"substantially similar," holding that the threshold requirement had been met. However—presumably recognizing that its judgment would not in fact dispose of the Dutch proceeding—it offered a "narrowly tailored" injunction that left Greenpeace free to pursue claims premised on "matters the North Dakota proceedings did not adjudicate."

Equitable Factors and the Role of Comity

Following the district court, the Supreme Court indicated that it was adopting the conservative approach to antisuit injunctions, which views international comity as a significant factor weighing against the issuance of such injunctions. Even under that approach, however, courts are typically willing to enjoin "interdictory" foreign proceedings whose aim is to preclude or interfere with the adjudication of a claim in U.S. court.

In this case, the court characterized the Dutch action as vexatious, stating that it was filed after the North Dakota case had been ongoing for more than six years and "on the eve of trial." (It is worth pointing out that Greenpeace sent a notice of liability the previous year, after the EU Directive entered into force.) Nevertheless, as the district court noted, it is hard to see how the Dutch action could have actually blocked or interfered with the North Dakota proceeding, which had already proceeded through trial at the time the injunction was sought.

Courts adopting the conservative approach are also willing to enjoin foreign proceedings that violate an important public policy of the forum. Invoking this doctrine, the North Dakota Supreme Court voiced its core objection to the Dutch suit:

North Dakota provides an orderly process for challenging an adverse verdict—post-trial motions and review in this Court… . [Greenpeace]'s Dutch action seeks a declaration that the North Dakota case was "manifestly unfounded and abusive" and demands damages designed to offset the jury's verdict. If successful, the Dutch action would contradict and offset the verdict, functionally nullifying it. This is not a legitimate parallel action. It is an attack on a fundamental policy of this state.

At this point, however, judgment in Energy Transfer's favor has already been entered in the North Dakota proceeding, triggering the principle of *res judicata*.

Unless and until a new trial is granted or that judgment is overturned on appeal, one would expect the Dutch court to consider that when assessing Greenpeace's claims that the North Dakota proceedings were "manifestly unfounded or abusive." (As recital 29 of the Directive indicates, if the claimant in the foreign proceedings "pursues claims that are founded, such proceedings should not be regarded as abusive.") Issuing an antisuit injunction that indirectly takes that decision out of the hands of the Dutch court would seem inconsistent with the concept of international comity.

Conclusion

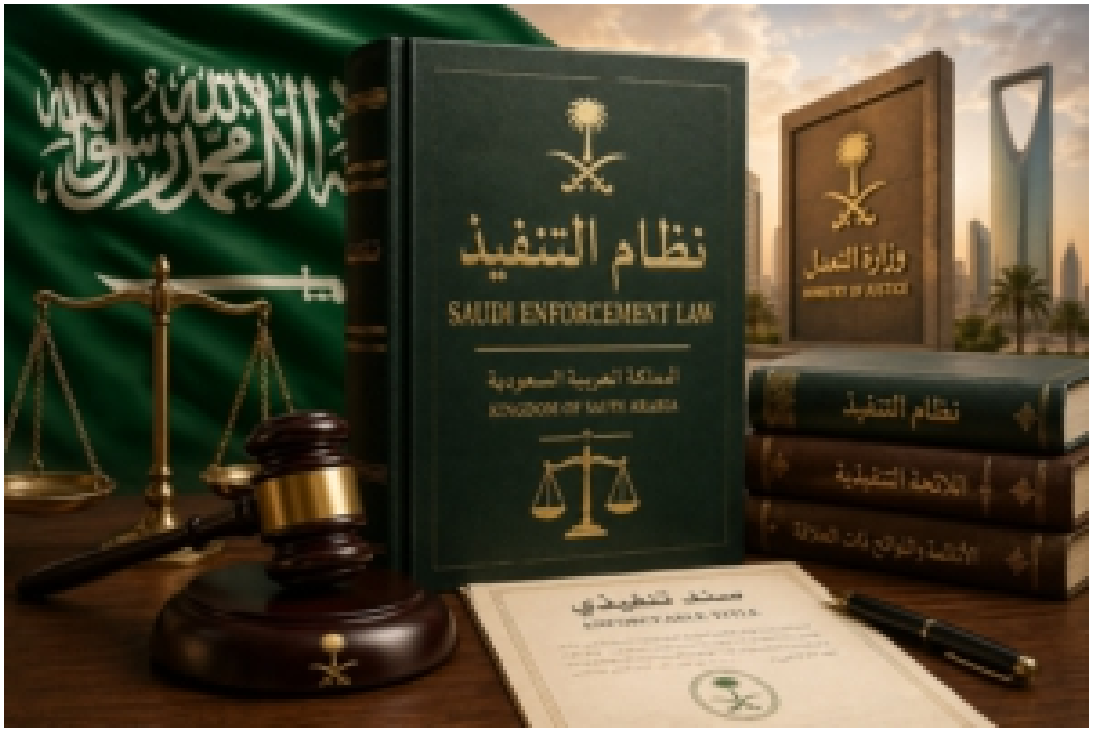
The North Dakota Supreme Court ultimately ordered the district court to enter a "narrowly framed" antisuit injunction. This injunction will bar Greenpeace "from pursuing any claim in the Dutch action whose elements require, as pleaded, a finding that the North Dakota case lacked legal foundation—including any claim premised on the 'manifestly unfounded' standard" of the EU Directive.

However, the injunction will *not* bar Greenpeace from asserting other claims in the Dutch litigation. Specifically, it would not bar claims "premised on Energy Transfer's dismissed federal RICO suit and on alleged out-of-court defamatory statements—matters the North Dakota proceedings did not adjudicate."

In a sense, this measure undermines international comity even more than a comprehensive antisuit injunction would. Its effect is to permit the foreign proceeding to continue while attempting to control the set of issues the foreign court can consider.

New Rules on the Enforcement of Foreign Judgments in Saudi Arabia

– Some Preliminary Observations



Many thanks to Karim El Chazli (Consulting and Testifying Expert on Arab Laws) for the tip-off

I. Introduction

The field of foreign judgments in the MENA region has witnessed additional legal developments. After Morocco, which adopted in February a new Code of Civil Procedure containing an updated regime for the enforcement of foreign judgments (see my previous on this blog), Saudi Arabia followed suit by adopting a new Execution Law (*Nizam at-Tanfidh*), approved by the Council of Ministers on 15 April 2026 (27–28 Shawwal 1447 H), which contains rules on the enforcement of foreign judgments. The new law replaces the existing Execution Law promulgated by Royal Decree No. M/53 of 3 July 2012 (13 Sha'baan1433 H).

The Execution Law governs, *inter alia*, the execution of "titles of obligation" (*sanadat tanfidhiyya* (pl.), *sanad tanfidhi* (sing.); lit. "enforceable titles") in

general, as defined by the Law. These include, among others, foreign judgments, foreign arbitral awards, and foreign authentic instruments declared enforceable in accordance with the rules set out in the Law. The new Execution Law (new Article 7) adds to the existing list (former Article 9) mediated settlement agreements concluded abroad. This addition appears to be linked to the fact that Saudi Arabia is a State Party to the 2018 Singapore Convention, which was ratified on 5 May 2020 and entered into force on 5 November of the same year.

II. Enforcement Requirements

With respect to the regime applicable to the enforcement of foreign judgments, the new conditions are now laid down in new article 9 of the new Law.

New Article 9(1) of the 2026 Execution Law reads as follows (loose tentative translation):

> *1. Without prejudice to the obligations of the Kingdom under international treaties and agreements, the court [the Execution Court] shall not declare enforceable a foreign judgment or order except on the basis of reciprocity and after examining that the following conditions are met:*
>
> *a) The dispute in which the foreign judgment or order was rendered does not fall within the exclusive jurisdiction of the courts of the Kingdom.*
>
> *b) There is no similar case pending in the Kingdom that was filed before the case in which the foreign judgment or order was rendered.*
>
> *c) The parties to the proceedings in which the foreign judgment was rendered were duly summoned, properly represented, and given the opportunity to defend themselves.*
>
> *d) The foreign judgment or order has become final, in accordance with the law governing the competent judicial authority that rendered it.*
>
> *e) The foreign judgment or order does not conflict with a prior judgment or order—on the same subject matter—rendered by a competent judicial authority in the Kingdom.*

f) The foreign judgment or order does not violate the public policy of the Kingdom.

Paragraph 2 deals with the enforcement of foreign arbitral awards and foreign mediated settlement agreements, while paragraph 3 deals with the enforcement of foreign authentic instruments.

III. Observations

If we compare the new enforcement requirements with those set out in the 2012 Execution Law, we can see that most of them have been reproduced without any significant modification, although in some cases slightly different wording has been used. This is particularly true of the requirements listed in items (c) [service and the right of defence], (d) [finality], (e) [conflicting judgments], and (f) [public policy], as well as of the proviso, which contains a reference to the reciprocity requirement.

At the same time, some significant differences can be observed, particularly with respect to the rules on indirect jurisdiction (1) and the existence of a pending case before Saudi courts (2). Further important clarifications relate to two other fundamental issues: the prohibition of *révision au fond* (3) and the limitation period for enforcing titles of obligation (4).

1. Indirect Jurisdiction

First, the most notable change concerns the control of the indirect jurisdiction of the rendering court. Indeed, under the 2012 Execution Law, the jurisdiction of the foreign rendering court was subject to a double control: first, by verifying that the dispute did not fall within the jurisdiction of Saudi courts (in general, and without any specific limitation); and second, by checking that the rendering court had jurisdiction in accordance with its own rules of international jurisdiction.

The new Execution Law significantly modifies the scope of the jurisdictional requirement and limits it to cases over which Saudi courts have exclusive jurisdiction. In doing so, the Saudi legislator joins other countries in the region

that have adopted similar approaches, notably Tunisia (see Béligh Elbalti, "The Jurisdiction of Foreign Courts and the Enforcement of their Judgments in Tunisia: A Need for Reconsideration", 8(2) *Journal of Private International Law* (2012) 195, and recently Morocco (see Béligh Elbalti, "The New Moroccan Framework on International Jurisdiction and Foreign Judgment Enforcement – A Preliminary Critical Assessment", on this blog. For a comparative overview on the various approaches adopted in the MENA region, see Béligh Elbalti, "The recognition of foreign judgments as a tool of economic integration: Views from Middle Eastern and Arab Gulf countries", *in* P. Sooksripaisarnkit and S. R. Garimella (eds.), *China's One Belt One Road Initiative and Private International Law* (Routledge, 2018) 226; *idem*, "Perspective from the Arab World", *in* M. Weller et al. (eds.), *The 2019 HCCH Judgments Convention – Cornerstones, Prospects, Outlook* (Hart, 2023) 187).

The problem with the new rule, however, is that Saudi law on international jurisdiction does not contain clear rules on what constitutes "exclusive jurisdiction." The relevant provisions on international jurisdiction contained in the Law of Procedure before Sharia Courts (*Nizam al-Murafa'at al-Shar'iyya*, Royal Decree No. M/1 of 24 November 2013 (22 Muharram 1435H), Articles 24 to 30) do not define or clearly identify which heads of jurisdiction are exclusive. As a result, the scope of the requirement may remain uncertain in practice, which could lead to a restrictive or inconsistent approach in the recognition and enforcement of foreign judgments.

2. Pending case before Saudi Courts

Item (b) of Article 9 of the new Law is an addition that has no equivalent in Article 11 of the 2012 Execution Law. While this requirement is generally found in the international conventions applicable in the region (notably the 1983 Riyadh Convention and the 1995 GCC Convention), it has almost no equivalent in the domestic legislation of Arab countries (with the notable exception of Lebanon. See Elbalti, "Perspective from the Arab World", *op. cit.*, 192). It should be noted, however, that Article 9(b) requires that the action previously brought before Saudi courts and still pending be "similar (*mumathila*)" to the one in which the foreign judgment was rendered. While the terminology used is somewhat vague, this suggests that both actions should involve the same subject matter (as is more

clearly required in Article 9(e) concerning conflicting judgments). It is, however, unclear whether this requirement also extends to the identity of the parties.

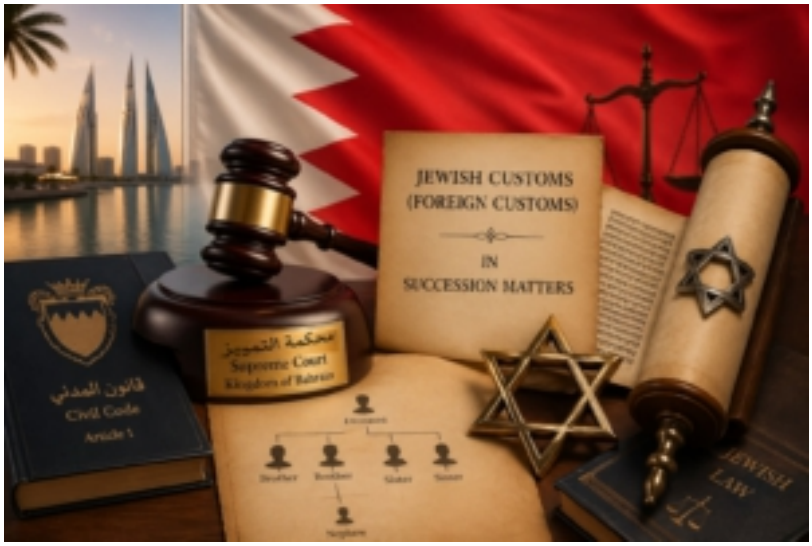
3. Explicit prohibition to review the merits of foreign judgments

Under the 2012 Execution Law, there is no explicit provision prohibiting a review of the merits of foreign judgments. Nevertheless, such a prohibition may be inferred from the imposition of a number of formal and procedural requirements for having foreign judgments declared enforceable. In judicial practice, the principle of the prohibition of *révision au fond* is frequently affirmed; however, some decisions suggest that it has not always been strictly observed (see Elbalti, "Perspective from the Arab World", *op. cit.*, 185). The new Law has addressed this issue expressly in Article 4(2), which provides that "Subject to the provisions of Article (9) of the Law, the court shall ensure that the title of obligation satisfies its statutory requirements, without examining the merits of the right forming its subject matter".

4. Limitation period to execution of the titles of obligations

The new Enforcement Law clarifies the limitation period applicable to the execution of titles of obligation. Under new Article 11, execution lapses upon the expiry of ten (10) years from the date on which the title becomes due and enforceable. Although this rule also applies to foreign judgments as titles of obligation (Article 7 of the new Law), the wording of the provision suggests that it concerns foreign judgments only once they have been declared enforceable by the Execution Court. The Law, however, contains no specific limitation period governing the filing of an application for a foreign judgment to be declared enforceable in Saudi Arabia. This suggests that, in principle, judgment creditors may apply at any time for such a declaration. By contrast, once enforceability has been granted, actual execution will be barred upon the expiry of the ten-year limitation period.

Bahraini Supreme Court Accepts the Applicability of “Foreign” Jewish Customs in a Succession Case Involving Bahraini Jews



I. Introduction

This is certainly a genuinely interesting case from Bahrain, involving the application of “foreign” Jewish customs in a succession dispute that appears to be between Jewish Bahraini nationals. Although the case seems to lack any foreign element, its relevance to conflict of laws is nonetheless clear, since – to my knowledge – this is the first case in which the applicability of “foreign” religious customs in matters of personal status has been explicitly admitted in what appears a purely domestic case. The case also provides a broader analytical framework, raising questions about the place and applicability of non-state law in private international law (this contrasts of the recent decision of the French Supreme Court denying the applicability of Jewish law, albeit in a different context) and, more generally, about the compatibility of non-Islamic religious norms with domestic public policy frameworks in Muslim-majority legal systems.

II. Facts

The case concerns a domestic succession dispute involving Jews in Bahrain. Although the ruling does not expressly state this, the absence of any reference to choice-of-law rules strongly suggests that the parties involved were Bahraini Jews and that the case contained no foreign elements.
Following their brother's death, Y1 (the deceased's brother) brought proceedings in 2024 before the High Civil Court against Y2 (the deceased's nephew) and Y3 (the deceased's sister), seeking the opening of the estate, the identification of the heirs, an inventory of the assets, and the devolution of the estate. The court ordered the opening of the estate and held that Y1 and Y2 were entitled to equal shares.

X et al. (the deceased's sisters), who were not parties to the original proceedings, filed a third-party objection seeking annulment of the judgment and a redistribution of the estate among all heirs, including themselves, in equal shares, based on Jewish inheritance customs or, subsidiarily, Islamic law. The objection was dismissed on the merits, and this outcome was upheld on appeal. X et al. then appealed to the Supreme Court of Bahrain, challenging their exclusion from the inheritance.

Before the Supreme Court, X et al. argued that the lower courts had relied on Chapter 27 of the Torah (the Old Testament), a text which, they contended, no longer reflects contemporary Jewish social or religious practice. They maintained that Jewish inheritance rules have evolved over time and that current customs within Jewish communities grant women equal inheritance rights in the absence of a will, an approach adopted by many rabbinical courts worldwide. In the absence of established Jewish inheritance rules or locally recognised custom in Bahrain, they argued that prevailing foreign custom should apply, since it does not conflict with Bahraini public policy.

III. Ruling

In its decision of 1 December 2025, the Supreme Court ruled in favor of X et al. holding as follows (detailed summary):

> *Under Bahraini law, the High Civil Courts have jurisdiction over all personal*

status matters concerning non-Muslims. Where no statutory rule applies, Article 1 of the Civil Code requires courts to apply the customs of the religious community concerned.

Such customs are not limited to those established locally in Bahrain. If no local custom is proven, courts may apply general or foreign customs, provided that they are genuinely observed by the members of the religion concerned. The application of foreign custom is subject to two conditions: first, that it is actually and consistently followed and regarded as binding within the community, that is, it has not fallen into disuse; and second, that it does not conflict with public policy in Bahrain. Where these conditions are met, the relevant foreign custom governs matters of personal status concerning members of the religion in question.

In this case, the lower court applied Chapter 27 of the Torah on the ground that no local Jewish custom governing the distribution of inheritance existed in Bahrain, thereby excluding any consideration of customs prevailing outside the Kingdom. However, once its existence is established, foreign custom may be disregarded only where it conflicts with a statutory provision or with public policy. The failure to examine whether relevant foreign Jewish inheritance customs existed and satisfied the required conditions—namely, that they are applied in a consistent, continuous, and well-known manner among members of the Jewish faith, that they are regarded by them as binding, and that they do not violate public policy—justifies the quashing of the decision and the remittal of the case.

III. Comments

Generally speaking, the application of foreign law in the MENA region has long been a challenging issue question marked by uncertainty and resistance in practice (for a general comparative overview, with a special focus on civil and commercial matters, see Béligh Elbalti, "Choice of Law in International Contract and Foreign Law before MENA Arab Courts from the Perspective of Belt and Road Initiative", *in* Poomintr Sooksripaisarnkit, Sai Ramani Garimella (eds.), *Legal Challenges of China's One Belt One Road Initiative – Private International Law Considerations* (Routledge, 2025), pp. 145-150). Against this background, the

acceptance by the Bahraini Supreme Court of the application of foreign customs in matters of personal status in a purely domestic case is all the more noteworthy, insofar as certain conditions are met.

The case raises in particular two fundamental questions: (1) the applicability of non-Muslim legal norms in Bahrain; and (2) the relevance of public policy in this context.

1. The applicability of non-Muslim legal norms in Bahrain

a) General Applicable framework

Unlike some non-neighboring countries in the region, where matters of personal status of non-Muslims—whether foreigners or nationals—may be governed by special legislation (see, for example, UAE federal legislation on Civil Personal Status), Bahrain has not adopted any specific legal framework applicable to non-Muslims.

There are, however, a few notable exceptions.

First, the 1971 Code of Civil and Commercial Procedure (CCCP) sets out conflict-of-laws rules that are expressly applicable to personal status matters involving non-Muslims (Article 21 of the Bahraini CCCP).

Second, Legislative Decree No. 11 of 1971 regulates inheritance and the devolution of estates of foreign non-Muslims.

Third, Legislative Decree No. 42 of 2002 on Judicial Jurisdiction provides, in Article 6, that disputes relating to the personal status of non-Muslims fall within the jurisdiction of the civil courts, as opposed to the Muslim Sharia courts, which, by contrast, have subject-matter jurisdiction over all disputes relating to the personal status of Muslims, with the exception of certain disputes relating to succession, which fall within the jurisdiction of the civil courts (Article 13). In this context, the Muslim Sharia courts are required to apply Bahrain's Family Law of 2017 (Law No. 17 of 2017), which to date constitutes the only legislative framework governing family law matters in Bahrain. This law, however, applies exclusively before the Muslim Sharia courts, which lack jurisdiction over disputes involving non-Muslims.

Accordingly, while the civil courts have jurisdiction *ratione materiae* to hear personal status disputes involving non-Muslims, Bahraini law does not specify the substantive law to be applied by those courts in such matters—except where the parties are foreigners and foreign law is applicable pursuant to Bahraini choice-of-law rules, or where the dispute concerns the succession of foreign non-Muslims, in which case Legislative Decree No. 11 of 1971 applies.

b) Customs as a source of law

It is in this context that the Bahraini Supreme Court relied on Article 1 of the Bahraini Civil Code of 2001, which authorizes courts to apply customs (*'urf*) in the absence of legislative provisions. The reference to customs is significant, given that Bahraini family law does not contain any provision allowing non-Muslims to invoke the application of their own religious law, unlike several neighbouring jurisdictions in the region (see Article 1(2) of the UAE Personal Status Law of 2024; Article 364 of the Kuwaiti Personal Status Law of 2007; Article 4 of the Qatari Family Law of 2006; and Article 282 of the Omani Personal Status Law of 1997).

The Bahraini Supreme Court's case law is consistent on this point. In a previous decision of 4 April 2023, the Supreme Court quashed a lower court judgment that had applied the 2017 Bahraini Family Law to a dispute involving spouses of the Bahá'í faith, without examining whether there existed any laws or regulations among members of the Bahá'í faith in Bahrain governing their personal status matters, or whether any customs regulated such matters. Unlike the case discussed here, the 2023 decision did involve a conflict-of-laws issue in the sense of private international law, which was resolved by applying Bahraini law as the *lex patriae* of the husband (Article 21(3) of the CCCP). It was at then that the Supreme Court emphasized the absence of Bahraini legislation governing personal status matters for non-Muslims and justified recourse to Article 1 of the Civil Code, thereby overruling the lower court's decision for failing to consider the applicability of Bahá'í law or custom.

However, what is remarkable in the present case is that the court extended the scope of the "customs" referred to in Article 1 of the Civil Code to include "general and foreign (external) customs", in the absence of a local one (*'urf*

mahalli). Reference to foreign (external) customs is, however, subject to two cumulative conditions: (1) the foreign customs must be generally observed by members of the relevant religious community, in the sense that they must not have fallen into disuse; and (2) they must not be inconsistent with public policy in Bahrain. With respect to the first condition, the appellants argued that the classical Jewish rule prioritizing male heirs and allowing women to inherit only in the absence of sons has become obsolete in contemporary Jewish social and religious communities. They contended that it has become common practice across Jewish communities worldwide to allow women to inherit on an equal basis, a practice consistently endorsed by rabbinic courts in various legal systems worldwide.

2. Consistency with public policy

Another key question concerns whether succession rules that depart from Islamic Sharia should be regarded as contrary to public policy. Given the centrality of Islamic Sharia in the legal systems of many MENA countries, succession rules raise a particularly sensitive issue when they diverge from its principles. This is more so, knowing that, in some jurisdictions, such as Egypt, where non-Muslims are permitted to apply their own religious rules in matters of family law, succession remains governed by a unified regime based on Islamic Sharia, which applies equally to Muslims and non-Muslims.

In the present case before the Bahraini courts, the applicable Islamic Sharia rules would have entitled the deceased's sisters to inherit, but only on the basis of the principle that a male heir receives a share equal to that of two female heirs (Quran 4:176). In addition, remote male agnates, such as nephews, will be excluded. It is therefore understandable that X et al. invoked Islamic Sharia in the alternative, since, unlike the classical Jewish rule at issue, it would at least secure them a share in the estate, albeit an unequal one (on the reliance of Jewish community on Islamic Sharia courts, see Jessica M. Marglin, "Jews in Shari'a Courts: A Family Dispute From the Cairo Geniza", *in* A. E. Franklin et al. (eds.), *Jews, Christians and Muslims in Medieval and Early Modern Times – A Festschrift in Honor of Mark Cohen* (Brill, 2014), pp. 207-25).

The central issue, however, is whether an equal division of the estate among all

potential heirs, without gender distinction, would raise concerns of Islamic public policy. On this point, comparative practice in the region shows a consistent reluctance to treat divergence from Islamic Sharia rules as such a violation. Courts across the Middle East have generally held that, in disputes involving non-Muslims, the application of foreign or religious rules differing from Islamic inheritance principles does not, in itself, offend public policy (for a detailed analysis from a private international law perspective, see Béligh Elbalti, "Applicable Law in Succession Matters in the MENA Arab Jurisdictions – Special Focus on Interfaith Successions and Difference of Religion as Impediment to Inheritance", *RabelsZ*, Vol. 88(4), 2024, pp. 734). Against this background, it is unlikely that the Bahraini courts would consider an equal distribution of the estate among heirs to be contrary to public policy, particularly where the applicable framework already permits recourse to religious or customary norms in the absence of specific legislation.

Advocate General Emiliou's Opinion on Case C-799/24: Res Judicata Effect Applies Despite Breach of Art 31(2) Brussels Ia

by Arvid Kerschnitzki, University of Augsburg

On 23 April 2026, Advocate General *Emiliou* published his opinion on Case C-799/24 – *Babcock Montajes S.A. v Kanadevia Inova Steinmüller GmbH*. It adds another piece to the puzzle that is the CJEU's broad interpretation of the term 'judgment' in the Brussels Ia Regulation. At the same time, the case highlights the persisting problems with procedural coordination under the regulation.

I. Facts of the case

The facts of the case as well as the procedural history have already been summarised in detail by *Lino Bernard* and *Marta Requejo Isidro* respectively, here and here.

To summarize:

A German and a Spanish company concluded a contract with an exclusive choice-of-court agreement in favour of a German court. Despite this agreement, the Spanish company initiated proceedings before a Spanish court in Madrid, seeking payment allegedly owed under the contract in connection with a bank guarantee invoked by the German company. Shortly thereafter, the German company brought proceedings before the designated German court in Cologne, seeking a declaration that the Spanish company was under an obligation to reimburse the German company and/or to pay damages.

The Madrid court affirmed its international jurisdiction without addressing the choice-of-court agreement, but declined territorial competence and referred the case to the court in San Sebastián (Spain). Although the German company did not challenge the Madrid court's decision, it subsequently contested the international jurisdiction before the San Sebastián court. This objection was rejected in an interim decision, with the court relying on the prior determination of the Madrid court.

In parallel, the German court seized by the German company dismissed the action as inadmissible, holding that it was bound, pursuant to Art. 36(1) of the Brussels Ia Regulation, to recognise the decision of the San Sebastián court, even though the choice-of-court agreement had been disregarded. On appeal, however, the German appellate court overturned this decision, finding that it retained international jurisdiction despite the Spanish court's ruling. This was due to the appellate court's assertion that the interim decision did not constitute a 'judgment' within the meaning of the Brussels Ia Regulation. The Spanish company appealed to the German Federal Court of Justice, which referred the following questions to the Court of Justice of the European Union:

1. Is the term 'judgment' in Article 36(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and

commercial matters ('the Brussels I Regulation') to be interpreted to the effect that the court of a Member State on which an agreement as referred to in Article 25 of the Brussels I Regulation confers exclusive jurisdiction (Article 31(2) of the Brussels I Regulation) must recognise a judgment by which a non-designated court of a Member State finds that the courts of that Member State have international jurisdiction if the judgment in question is an interim judgment, in other words, is not a decision which terminates a dispute?

2. If the answer to Question 1 is, in principle, in the affirmative: Does recognition of the interim judgment also depend on whether the interim judgment affirming the international jurisdiction of the courts of the Member State is binding on the non-designated court itself and/or whether the affirmation of international jurisdiction may be varied in the context of an appeal?

II. Opinion of Advocate General Emiliou

AG *Emiliou* addressed the questions jointly, understanding them as asking 'whether an interim decision adopted by a court of a Member State, in which that court (only) declares itself to have international jurisdiction, but which does not yet make any determination on the merits of the claim, is covered by the concept of "judgment" within the meaning of Art. 36(1) of Regulation No 1215/2012 and must therefore be recognised in accordance with that provision, even if that decision allegedly contradicts an exclusive choice-of-court agreement designating the courts of another Member State.' (para 27).

He begins by emphasising that an infringement of a choice-of-court agreement cannot justify refusal of recognition (paras 38–56). This is based on the prohibition of a *révision au fond* (para 39), as also confirmed by the *Gjensidige* judgement (C?90/22) (para 42).

Turning to the central issue – whether an interim decision by which a court of a Member State declares itself to have jurisdiction, allegedly in breach of a choice-of-court agreement, constitutes a 'judgment' within the meaning of Art. 2(a) of the Brussels Ia Regulation – AG *Emiliou* relies on the Court's case law, in particular *Maersk* (Joined Cases C-345/22 to C-347/22) and *Gothaer* (C-456/11), to show that procedural decisions are not excluded from the concept of a 'judgment' (para 67–73). While acknowledging that these cases do not directly address the present

issue (para 69), he argues that there is no convincing reason to distinguish between a decision declining jurisdiction (as in *Gothaer*) and one confirming jurisdiction (as in the present case) (para 79).

The AG then highlights the importance of the concept of 'judgment' in the context of *lis pendens* (para 74). He notes that the proper functioning of the obligation to decline jurisdiction under Art. 29(3) would be uncertain if a purely jurisdictional decision were not regarded as a 'judgment' capable of recognition (para 76).

AG *Emiliou* emphasises that, although safeguarding the practical effectiveness of choice-of-court agreements is a legitimate concern, the protection afforded by Art. 31(2) does not justify excluding decisions containing only jurisdictional findings from the concept of a 'judgment' within the meaning of the Regulation (paras 86–88). Refusing recognition of such an interim decision would effectively permit parallel proceedings and thereby create a risk of conflicting judgments – undermining the very objectives of the *lis pendens* rules (para 89). In such circumstances, Art. 29(3) should take precedence over Art. 31(2) once it becomes clear that parallel proceedings cannot be avoided through the mechanisms of Art. 31(2) (para 90).

Finally, AG *Emiliou* argues that the obligation to decline jurisdiction under Art. 29(3) may arise at different stages of the proceedings, depending on whether the defendant is still able to contest jurisdiction. The court second seised should only decline jurisdiction once it can be safely assumed that the court first seised will proceed to examine the case on the merits (para 96). Referring to the wording of Art. 38(a), he concludes that the obligation to recognise a judgment containing only a jurisdictional determination may arise irrespective of whether that judgment is final. By contrast, the obligation to decline jurisdiction under Art. 29(3) arises only once the jurisdiction of the court first seised has been established in such a way that it can no longer be contested (para 98).

In response to the second question referred, *Emiliou* further suggests that a jurisdictional determination may produce *res judicata* effects which cannot subsequently be set aside by the courts with priority (paras 99–101).

To summarise the Opinion of AG *Emiliou*: an interim decision, even if given in breach of a choice-of-court agreement, constitutes a 'judgment' within the meaning of Art. 2(a) of the Regulation and must be recognised. While the

obligation of recognition arises irrespective of whether the decision is final, the obligation of the court designated in the choice-of-court agreement to decline jurisdiction under Art. 29(3) arises only once the jurisdiction of the court first seised can no longer be contested in the ongoing proceedings.

III. Comment

The present proceedings will likely make a further contribution to the CJEU's emerging, controversial line of case law on what constitutes a 'judgment' capable of recognition within the meaning of Art. 36 of the Brussels Ia Regulation. Prominent examples include *H Limited* (C-568/20), *London Steam-Ship* (C-700/20) and *Gothaer* (C-456/11), all of which are referenced in the Opinion (Fn. 32, 34, 39).

To date, the Court has consistently adopted a broad interpretation of this concept, notwithstanding substantial criticism from scholars. The Opinion of AG *Emiliou* continues this approach by interpreting 'judgment' within the meaning of the Regulation as encompassing interim decisions, even where they are given in breach of Art. 31(2).

Even though (German) scholarship remains cautious with regard to the recognition of such decisions, the reasoning of AG *Emiliou* is largely convincing, albeit with some caveats.

The main reservation concerns his argument that the obligation to decline jurisdiction under Art. 29(3) needs to be reinforced by treating jurisdictional decisions as recognisable judgments (paras 76–78). This step does not appear necessary. As he himself acknowledges (para 78), the same line of reasoning could lead to the opposite conclusion, namely that Art. 29(3) already provides a sufficient mechanism, making the recognition of an interim judgment in such circumstances superfluous.

However, the Opinion remains firmly in line with the Court's existing case law, with the judgment in *Gothaer* (see especially Nr. 79). It is convincing in emphasising that, while the Regulation seeks to protect choice-of-court agreements, the prevention of parallel proceedings – and thus of conflicting judgments – carries greater weight (paras 89–90). This is further underpinned by the emphasis on mutual trust and the free circulation of judgments (paras 38–40, 82, 85, 87).

It is, however, somewhat surprising that AG *Emiliou* initially relies on Art. 29(3) as a key argument in favour of recognising the interim judgment, yet ultimately maintains a substantive distinction between the obligation to recognise such a judgment under Art. 36(1) and the obligation to decline jurisdiction under Art. 29(3). In the present case, this distinction does not appear to affect the outcome. It remains to be seen in which situations it might lead to different results.

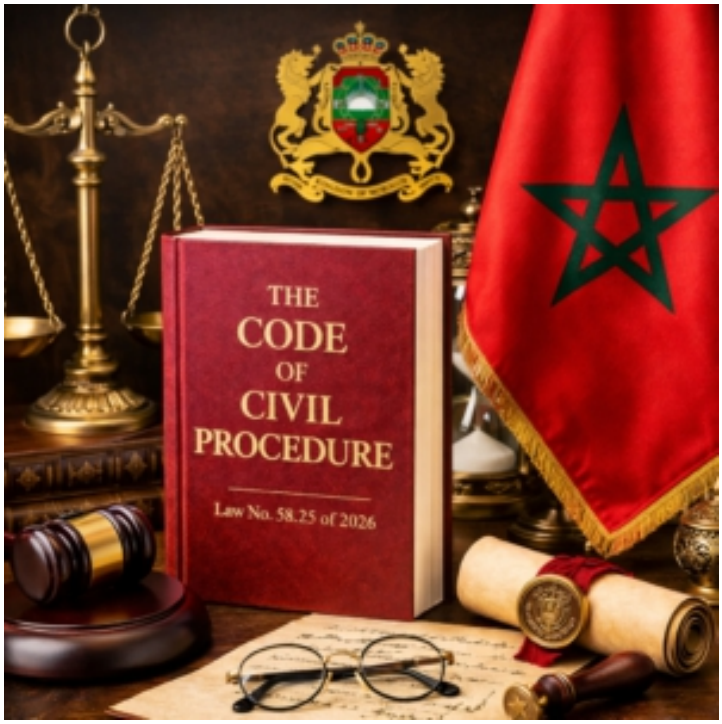
Ultimately, however, the case reveals a more fundamental issue. As Lino Bernard has aptly observed, it is, in essence, concerned with procedural coordination under the Brussels Ia Regulation. Since a violation of the *lis pendens* rules does not constitute a ground for refusal of recognition (*Liberato* – C-386/17; see also AG *Emiliou*'s Opinion, Nr. 53), the question whether an interim decision is capable of recognition becomes particularly significant in this context. By contrast, if the *lis pendens* rules were enforced at the level of Art. 45(1), the issue of recognisability would be far less consequential, as recognition could be refused on that basis.

In this regard, it is remarkable that AG *Emiliou*'s decision *prima facie* strengthens (see para 76) the *lis pendens* rules at the stage of recognition. It may provide a workable interim solution for the principle of priority under Art. 29(1) and (3). But at the same time, as the present case illustrates, it sacrifices the protection of choice-of-court agreements under Art. 31(2). This could conceivably create new opportunities to misuse the *lis pendens* rules and encourage a *race to the courts*, particularly for claimants with the ability to convince the court to issue an early interim decision.

Accordingly, the case once again highlights the need to elevate the entire *lis pendens* regime to a ground for refusal of recognition. Encouragingly, the Commission's Report on the application of the Brussels Ia Regulation suggests that the recast may address this issue.

Independent of any reform of the Regulation, it remains to be seen whether the Court will follow AG *Emiliou*'s broad understanding of 'judgment' and continue its line of extending the interpretation of that concept within the meaning of the Regulation.

The New Moroccan Framework on International Jurisdiction and Foreign Judgment Enforcement – A Preliminary Critical Assessment



I. Introduction

Finally out: the new Moroccan Code of Civil Procedure (Law No. 58.25), the preparation of which was previously announced on this blog, has been promulgated by *Dahir* (Royal Decree) No. 1.26.07 of 11 February 2026 and published in the Official Journal (*Al-Jarida Ar-Rasmiyya*) No. 7485 of 23 February 2026. The legislative process was fraught with difficulties, and the draft went back and forth several times before its final adoption earlier this year. The Code will enter into force six months after its publication, i.e. on 24 August 2026.

As previously introduced on this blog, the preparatory work for the new Code dates back to 2023, when a first draft was submitted to the Moroccan House of Representatives (Draft No. 02.23). One of the main innovations of the new Code is the introduction, *for the first time in Moroccan history*, of a catalogue of rules on international jurisdiction. The Code also amends the existing rules governing the recognition and enforcement of foreign judgments. Apart from a few minor exceptions, the provisions contained in the new Code, both on international jurisdiction and on the recognition and enforcement of foreign judgments, remain largely unchanged compared with those previously presented, save for limited linguistic and stylistic adjustments that do not entail any substantive legal implications.

What follows is a brief outline of the main solutions adopted in the Code, followed by a short assessment.

II. International Judicial Jurisdiction

The rules governing international jurisdiction are now expressly set out in Articles 72 to 75 of the new Code, contained in Chapter IV, entitled *"International Judicial Jurisdiction"* (*al-Ikhtisas al-Qada'i ad-Duwali*). The new rules may be summarized as follows:

1. General jurisdiction based on the defendant's Moroccan nationality and the domicile or residence of a foreign defendant in Morocco (Articles 72 and 73)

Article 72 confers general jurisdiction on Moroccan courts on the basis of the Moroccan nationality of the defendant, even where the latter has neither domicile nor residence in Morocco. Article 73, by contrast, adopts the classical principle of *actor sequitur forum rei* when proceedings are brought against a foreign defendant. In both cases, jurisdiction is excluded where the action concerns an immovable property located abroad (last sentence of Articles 72 and 73).

2. Special jurisdiction in cases where the action is brought against foreign

defendants with no domicile or residence in Morocco (Article 74)

Article 74 lays down an additional set of rules on special international jurisdiction applicable where proceedings are brought against foreign defendants who have neither domicile nor residence in Morocco. In such cases, Moroccan courts may assume jurisdiction when the action concerns:

1) assets located in Morocco, or obligations formed, performed, or to be performed in Morocco (Article 74(1));

2) tortious liability where the act giving rise to liability or the damage occurred in Morocco (Article 74(2));

3) the protection of intellectual property rights in Morocco (Article 74(3));

4) proceedings relating to businesses in difficulty instituted in Morocco (Article 74(4));

5) cases involving multiple defendants, provided that at least one of them is domiciled in Morocco (Article 74(5));

6) maintenance obligations where the maintenance beneficiary resides in Morocco (Article 74(6));

7) matters relating to the filiation of a minor residing in Morocco, or to guardianship over a person or property (Article 74(7));

8) matters of personal status where

- (i) the plaintiff is Moroccan, or
- (ii) the plaintiff is a foreigner residing in Morocco and the defendant has no known domicile abroad (Article 74(8))

9) dissolution of the marital bond where

- (i) the marriage contract was concluded in Morocco;
- (ii) the action is brought by a spouse who is a Moroccan national; or
- (iii) one spouse has abandoned the other and established domicile abroad or has been deported from Morocco (Article 74(9)).

In addition, article 74 *in fine* further clarifies the ancillary heads of international

jurisdiction. In particular, Moroccan courts to hear an original action are also empowered can assume jurisdiction to adjudicate any counterclaims and related claims arising from the same legal relationship. Finally, Moroccan courts are granted jurisdiction to order conservative and provisional measures intended to be executed in Morocco, even where they lack jurisdiction over the merits of the principal dispute.

3. Jurisdiction based on the agreement of the parties (Art. 75)

The new Code also recognises party autonomy as an independent basis of international jurisdiction. Under Article 75 para. 1, even where a dispute would not otherwise fall within the ordinary heads of jurisdiction set out above, Moroccan courts may assume jurisdiction where the defendant expressly or implicitly consents to, or submits to, their jurisdiction. This jurisdiction by consent is, however, excluded where the action concerns immovable property situated abroad.

4. Ex officio declining jurisdiction in the event of non-appearance

The Code further introduces a rule aimed at preventing the exercise of jurisdiction by default (Article 75 *in fine*). Where the defendant fails to enter an appearance, the court is required, *ex officio*, to decline jurisdiction and to declare itself incompetent.

III. Recognition and Enforcement of Foreign Judgments

The new rules on the recognition and enforcement of foreign judgments are now set out in Articles 451 to 456 of the new Code. While they largely reproduce existing solutions, they nonetheless introduce several important innovations.

1. Necessity of *exequatur*

Article 451 establishes the principle that foreign judgments cannot be enforced in

Morocco as such. Their enforcement is subject to a prior declaration of enforceability (*exequatur*) by the competent Moroccan court, granted in accordance with the conditions laid down in the Code. Article 452 sets out the procedural framework governing applications for *exequatur*, while article 454 specifies the documentary requirements and the avenues of appeal applicable to *exequatur* proceedings.

2. Enforcement requirements

Article 453 sets out the substantive conditions that must be satisfied before a foreign judgment may be declared enforceable in Morocco. These requirements may be grouped as follows.

a) Requirements relating to the jurisdiction of the foreign court. First, the foreign court must not have ruled on a matter falling within the exclusive jurisdiction of Moroccan courts (Article 453(i)). In addition, the choice of the foreign forum must not have been tainted by fraud (Article 453(ii)).

b) Requirement relating to due process. Due process guarantees must have been respected, in particular insofar as the parties were duly summoned and properly represented in the proceedings before the foreign court (Article 453(iii)).

c) Requirements relating to finality and the absence of conflicting judgments. The judgment must be final and conclusive under the law of the court of origin (Article 453(iv)). Moreover, it must not be incompatible with a judgment previously rendered by Moroccan courts (Article 453(v)).

d) Requirement relating to public policy. The foreign judgment must not violate Moroccan public policy (Article 453(vi)).

e) Requirement relating to the contravention of international conventions ratified by Morocco. Finally, the content of the enforcement judgment must not contravene the provisions of any international convention ratified by Morocco and published in the Official Gazette (Article 453(vii)).

3. The reciprocity requirement

In addition to the foregoing conditions, Article 456 introduces the requirement of reciprocity as a condition for the enforcement of foreign judgments. While the application of the above requirements remains subject to international conventions binding on Morocco, the new Code now expressly requires that the existence of reciprocal treatment between Morocco and the State of origin be taken into account when ruling on an application for *exequatur*.

4. Instruments eligible to enforcement

Article 455 extends the *exequatur* mechanism beyond foreign judgments to cover titles and authentic instruments drawn up abroad. Such instruments may be enforced in Morocco provided that they were established by competent public officers or public servants and that they qualify as enforceable titles under the law of the State of origin. Their enforcement in Morocco is subject to a prior declaration of enforceability and is conditional upon the instrument being enforceable in its State of origin and not being contrary to Moroccan public policy.

IV. Comments

The introduction of new rules on international jurisdiction and on the recognition and enforcement of foreign judgments is, in itself, a welcome development. It reflects a growing awareness among the Moroccan authorities of the practical importance of private international law and an intention to provide legal practitioners and courts with a clearer and more structured framework. This development is consistent with Morocco’s increasing engagement at the international level, notably through the work of the Hague Conference on Private International Law (HCCH), an engagement that has recently culminated in the establishment of an HCCH Regional Office for Africa in Morocco.

However, from a substantive point of view, the newly adopted rules may leave a certain sense of dissatisfaction. This is due to a number of issues, most of which were already pointed out in a previous post on this blog.

1. International jurisdiction

First, as regards the legal framework governing international jurisdiction, a reading of the adopted provisions gives the impression that the legislature has remained attached to an outdated conception of private international law, and has failed to take account of more recent developments, even with respect to some fundamental issues. In particular, the new rules do not distinguish between exclusive and concurrent heads of jurisdiction, despite the practical importance of such a distinction for the recognition and enforcement of foreign judgments. Nor do they introduce specific regimes for situations requiring enhanced protection, such as disputes involving weaker parties (notably consumers and employees), or provide more detailed rules for parallel proceedings, including *lis pendens* and connexity.

More importantly, the new Code introduces a number of questionable grounds of jurisdiction. These include, in particular, the nationality of the defendant, the place of conclusion of the contract, and the mere location of property in Morocco, irrespective of its value. Finally, although the Code introduces a new rule based on party autonomy in matters of jurisdiction, it fails to provide a clear and coherent regime governing choice-of-court agreements, in particular as regards whether the parties may oust the jurisdiction of Moroccan courts that would otherwise be competent under the newly adopted rules.

2. Enforcement of foreign judgments

While the new provisions clarify the formal requirements for the enforcement of foreign judgments, they fail to take sufficient account of existing judicial practice and introduce rules that lack precision and are open to divergent interpretations.

For instance, Moroccan law does not, as a general rule, clearly distinguish between recognition and enforcement, as foreign judgments are in principle subject to a prior declaration of *exequatur*. Nevertheless, the case law of the Moroccan Supreme Court has, to some extent, developed a pragmatic approach that de facto allows the recognition of certain effects of foreign judgments even in the absence of a prior *exequatur* declaration. However, the new Code does not take these developments into account and instead adopts rules focusing exclusively on the enforcement of foreign judgments, thereby leaving the status

quo on this issue largely unchanged.

In addition, the new rules clarify the control exercised over the jurisdiction of the foreign court by introducing a twofold examination. First, the matter decided by the foreign court must not fall within the exclusive jurisdiction of Moroccan courts. However, as noted above, the new provisions on international jurisdiction fail to identify or define the matters that are to be regarded as falling within such exclusive jurisdiction. Secondly, the rules require that the choice of the court of origin must not have been fraudulent. In this respect, it should be noted that an additional requirement concerning the existence of a characteristic connection between the dispute and the State of the rendering court had initially been envisaged. This requirement, which echoed the approach adopted by the French *Cour de cassation* in the well-known *Simitch* case, was ultimately removed from the final version of the Code, arguably because of the practical difficulties it would have entailed for judges in assessing the existence of such a connection.

Furthermore, the version finally adopted introduces a new requirement that was absent from earlier drafts and appears to have been added during the legislative process. This concerns the condition that the content of the enforcement judgment must not contravene an international convention duly ratified by Morocco. The rationale for the introduction of this requirement is not only unclear, but the provision itself is largely redundant. Indeed, Articles 454 and 456 of the new Code already give priority to the application of international conventions ratified by Morocco. The provision appears also to be difficult to apply in practice, given that the manner in which this provision is formulated, particularly in the Arabic version of the text, is awkward and makes its precise scope and operation difficult to ascertain.

Finally, the introduction of reciprocity as a condition for the enforcement of foreign judgments comes as something of a surprise and is arguably problematic. The former Code of Civil Procedure contained no reference to reciprocity, and Moroccan practice had long evolved without treating it as a relevant requirement. It is true that Article 19 of the *Dahir* (Royal Decree) of 12 August 1913 on the civil status of French nationals and foreigners in Morocco refers to reciprocity. However, although that provision has never been formally repealed, the prevailing view among Moroccan scholars is that it is no longer applicable, a position reflected in judicial practice, as Moroccan courts do not rely on it in their decisions. More importantly, the inclusion of reciprocity appears at odds with the

general tendency in comparative law, which is either to abandon this requirement or to significantly limit its effect. Its (re?)introduction sends a negative signal to jurisdictions where reciprocity remains a condition for recognition and enforcement and is likely to unnecessarily complicate both the recognition of foreign judgments in Morocco and, consequently, the circulation of Moroccan judgments abroad.

V. Concluding Remarks

The general impression that emerges from a reading of the new rules is, on the whole, one of disappointment. The newly adopted provisions appear to be based on an outdated model and fail to take account of recent developments, including those observed in neighbouring jurisdictions. The content of a number of provisions gives the impression of a step backwards in time. For instance, some of the newly adopted rules, notably in matters of international jurisdiction, are comparable to those formerly found, for example, in Tunisia under the Code of Civil Procedure of 1959, which were later repealed and replaced by more modern provisions now contained in the Code of Private International Law of 1998. The new rules also do not fully reflect existing Moroccan practice, whether at the diplomatic level, where Morocco has been actively engaged with the work of the HCCH – an engagement that contributed to the establishment of its Regional Office for Africa in Morocco – or at the judicial level, particularly in the field of recognition and enforcement of foreign judgments. Available records relating to the drafting process suggest that these issues did not receive the level of attention they deserved, nor did they benefit from sufficient expert consultation or discussion that might have allowed the legislature to draw on both recent international developments and established domestic practice. One hope nevertheless remains: that the Code will already be subject to early reform.

The Reception of Hilton v Guyot and Comity in the Recognition and Enforcement of Foreign Judgments in Anglophone Africa

Introduction

Hilton v Guyot, is the most influential case in the United States—and perhaps globally—on the use of comity as a basis for recognising and enforcing foreign judgments. In that case, Justice Gray of the United States Supreme Court defined comity as follows:

"No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent of which the law of one nation… shall be allowed to operate within the dominion of another nation, depends upon… the "comity of nations"…"

Comity in the legal sense is neither a matter of absolute obligation, on one hand, nor a mere courtesy and goodwill, on the other; it is the recognition which one allows within its territory to the legislative, executive or judicial act of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under protection of its laws…"

By contrast, under English common law, the dominant basis for recognising and enforcing foreign judgments is the theory of obligation. Blackburn, J in the English case of *Schibsy v Westenholz* stated that the true principle is that,

"…the judgment of a court of competent jurisdiction over the defendant, imposes a duty or obligation on him to pay the sum for which the judgment is given, which the courts in this country are bound to enforce…"

And further on in his judgment, Blackburn J. makes it plain that the doctrine of "comity" is incorrect. Thus, no question of reciprocity could arise in an action brought upon a foreign judgment."

The theory of obligation is applied in many Commonwealth and Anglophone African countries. Interestingly, an emerging but underexplored trend is the growing consideration—and in some instances, application—of the principle of comity by courts in these jurisdictions, with several African judges expressly citing *Hilton v Guyot*.

This blog highlights selected cases illustrating this development, focusing on Liberia, Kenya, Uganda, Tanzania, South Africa, and Nigeria. The discussion is limited to the common law framework and does not address statutory regimes or international conventions.

Liberia

Liberia is a country that has historical ties of dependence to the United States located in West Africa. In *Turner v Burnette*, the Liberian Supreme Court firmly established the principle of comity in the recognition and enforcement of foreign judgments, drawing particular support from *Hilton v Guyot*. The Court further explained—by reference to another U.S. authority—that:

"*The application of comity does not rise [sic] to the effect of establishing an imperative rule of law; it has the power to persuade but not command. Comity being voluntary, and not obligatory, rests in the discretion of the tribunal of the forum and is governed by certain more or widely recognized rules." Generally, greater force and dignity will be given to judgments of foreign courts when parties have had their day in a court of competent jurisdiction, after due service of process or after an entry of appearance, and have had a full and impartial hearing upon the merits of their case; unless it can be shown that the proceedings were tainted with fraud."*

Andrew Moran and Anthony Kennedy, conclude on the basis of the above Liberian Supreme Court decision that, "*It seems, therefore, that any foreign judgment may be enforceable in Liberia at common law as a matter of comity between nations. The procedure appears to be that a suit commenced on the foreign judgment, in the same way as an action is commenced at common law in other jurisdictions.*"

Kenya

Kenya is a former colony of the United Kingdom located in East Africa. Nevertheless, Kenyan courts apply both the theory of obligation and the principle of comity in recognising and enforcing foreign judgments at common law.

In *ABSA Bank Uganda Limited (Formerly Known as Barclays Bank of Uganda Limited) v Uchumi Supermarkets PLC,* the Kenyan High Court held at paragraph 5 that,

In the absence of a reciprocal enforcement arrangement, a foreign judgment was enforceable in Kenya as a claim in common law. Where a foreign court of competent jurisdiction had adjudicated a certain sum to be due to another, a legal obligation arose to pay that sum, on which an action of debt to enforce the judgment could be maintained. In deciding whether a foreign court was one of competent jurisdiction, the courts would apply not the law of the foreign court itself but English rules of private international law. The competence of the foreign court was the competence of the court in an international sense, that was, its territorial competence over the subject matter and the defendant. Its competence or jurisdiction in any other sense was not material."

However, in a more recent case, the Kenyan Supreme Court in *Ingang'a & 6 others v James Finlay (Kenya) Limited*, relying on *Hilton v Guyot*, applied the principle of comity in determining whether to recognise and enforce a locus inspection order from Scotland (see Anam Abdul Majid and Chukwuma Okoli). After quoting the key passage from *Hilton v Guyot* with approval, the Court stated at paragraph 60 that:

"This approach prioritizes citizen protection while taking into account the legitimate interests of foreign claimants. This approach is consistent with the adaptability of international comity as a principle of informed prioritizing national interests rather than absolute obligation, as well as the practical differences between the international and national contexts."

Uganda

Uganda is a former colony of the United Kingdom located in East Africa. Nevertheless, Ugandan judges apply both the theory of obligation and the principle of comity in recognising and enforcing foreign judgments at common law.

At common law, the principle of comity, with key reference to *Hilton v Guyot,* also formed the sole basis of recognising and enforcing a US judgment in the earlier Ugandan case of *Christopher Sales v Attorney General.*

More recently, Ugandan courts have justified the recognition and enforcement of foreign judgments by reference to the theories of obligation, comity, and reciprocity. In the very recent case of *Brianna v Mugisha*, Justice Nagawa, after a careful consideration of Ugandan case law authorities and *Hilton v Guyot*, stated that:

"5.4 However, I have observed that despite the absence of a statutory reciprocal arrangement, Ugandan courts have recognized and enforced foreign judgments under the common law principles of obligation, reciprocity, and comity.

5.5. These doctrines provide a legal foundation for cross-border judicial cooperation, particularly in the absence of a formal treaty or statutory framework, such as in the case of Uganda and the United States.

5.6. The doctrine of comity is based on mutual respect between sovereign states. It allows a court to recognize and enforce a foreign judgment not as a matter of strict legal obligation, but out of respect to the foreign court's authority and fairness in its proceedings. Courts apply comity where: the foreign court had competent jurisdiction over the matter and the parties, the proceedings were conducted fairly, with due process observed and enforcing the judgment would not be contrary to public policy in the recognizing jurisdiction.

5.7. The obligation theory treats a valid foreign judgment as creating a legal duty on the judgment debtor to comply, similar to a contractual obligation. This approach holds that once a court of competent jurisdiction has determined a party's liability, that decision should be

respected and enforced in other jurisdictions unless there is a compelling reason not to do so, such as: Fraud in obtaining the judgment, Violation of natural justice, or a fundamental defect in jurisdiction.

5.8. Under reciprocity, a foreign judgment will only be enforced if courts in the originating country would likewise enforce judgments from the enforcing country. This principle ensures mutual legal cooperation between jurisdictions."

It must be noted, however, that the recent acceptance of reciprocity in Uganda as a basis for recognising and enforcing foreign judgments at common law represents a significant departure from the position in other Anglophone and Commonwealth African countries, as well as Commonwealth jurisdictions more generally. It should also be emphasised that the court's remarks on the applicability of reciprocity at common law were, at best, obiter, as the court did not apply the doctrine to the facts of the case.

Tanzania

In Tanzania, a significant number of recent cases have used foreign judgments to preclude new actions on grounds of res judicata, obligation, and comity (*Exim Bank (COMORES) SA vs Costa Sari; Standard Chartered Bank (Hong Kong) Limited & Another vs Independent Power Tanzania Limited & Others*)

South Africa

South Africa, located in Southern Africa and formerly colonised by both Britain and the Netherlands, is a mixed legal system drawing from Roman Dutch law and the common law. The theory of obligation remains the dominant basis for the recognition and enforcement of foreign judgments. This position was affirmed by the Supreme Court of Appeal in *Jones v Krok*, where the Court endorsed the English authority of *Nouvion v Freeman* as support for applying the obligation theory in recognising and enforcing foreign judgments

However, in *Government of the Republic of Zimbabwe v Fick*,, the Constitutional Court referred to the principle of comity to justify the development of the common law framework for recognising and enforcing judgments from international courts, signalling a limited but notable openness to comity based reasoning.

Nigeria

Nigeria is a former colony of the United Kingdom and is located in West Africa. Under the common law regime, it applies the theory of obligation in the recognition and enforcement of foreign judgments (*Alfred C Toepfer Inc v Edokpolor).*

However, some Nigerian judges at the Supreme Court have proposed comity, jurisdictional reciprocity, and the facilitation of international trade and commerce as additional bases for enforcing foreign judgments (Grosvenor Casinos Ltd v Ghassan Halaoui (2009) 10 NWLR 309, 338–39 (Oguntade JSC)), but there has been no reported case where these proposals have been implemented in practice.

Conclusion

The purpose of this post is to highlight how selected Commonwealth and Anglophone African courts have received and applied the principle of comity in the recognition and enforcement of foreign judgments under the common law, particularly as articulated in *Hilton v Guyot*.

At present, Liberia is the only jurisdiction that fully applies the principle of comity as advanced in *Hilton v Guyot*, arguably influenced by its historical ties to the United States.

Kenya, Uganda and Tanzania apply the doctrine of obligation alongside the principle of comity.

South Africa primarily follows the doctrine of obligation, although a few cases have considered comity in the context of recognising and enforcing foreign judgments, albeit without concrete application.

In Nigeria, courts continue to rely principally on the doctrine of obligation at common law. Although some Supreme Court justices have proposed comity as a possible basis for enforcement, this has not been implemented in practice.

Overall, the doctrine of obligation remains the dominant common law basis for the recognition and enforcement of foreign judgments across Anglophone and Commonwealth Africa. Nonetheless, the principle of comity, as developed in

Hilton v Guyot, continues to play an important role in shaping the jurisprudence of a limited number of African jurisdictions.

No Exequatur Granted for a Panamanian Judgment in Greece Due to Public Policy Considerations [Piraeus Court of First Instance Case No. 2040/2026, Unreported]

INTRODUCTION

Following a significant hiatus, the public policy defense has re-emerged prominently in discussions surrounding the enforcement of foreign judgments, particularly in the context of a judgment issued by the Panama Maritime Court in 2024. The primary issue addressed by the Greek court was whether a foreign judgment could be recognized and enforced when the foreign court denied appellate proceedings due to the failure to post a security deposit that was both substantial and necessary for the appeal process.

FACTUAL BACKGROUND AND LEGAL FRAMEWORK

The case involved a claim for damages between a company based in Hong Kong and another company registered in the Marshall Islands. This dispute was adjudicated under Panama’s maritime law, established by Law 8 of 1982 and

updated by Law 55 of 2008, which governs maritime-related disputes through a specialized and efficient legal framework. The Panamanian maritime courts possess exclusive jurisdiction over in rem actions, enabling prompt vessel arrests and maritime liens within both Panamanian territorial waters and the Panama Canal for claims related to damages, cargo issues, and collisions.

The Panamanian court ruled in favor of the claimant, mandating the defendant to either return the vessel or pay approximately 45 million USD, i.e., the valuation of the vessel along with associated legal costs, as ordered by the court.

Subsequently, the judgment creditor sought recognition and enforcement of the Panamanian judgment in Greece, as the vessel was docked within Greek territorial waters.

The opposing party contended that the ruling from the Panamanian Naval Court of First Instance contravened Greek public policy and the European Convention on Human Rights (ECHR), primarily because the appellate process was effectively obstructed. According to Article 490 of Panama's Maritime Courts and Disputes Law, the appellant was required to deposit a security of nearly 45 million USD (equivalent to the judgment amount and associated legal fees) within ten days to have its appeal considered.

The original text from Article 490 reads:

"Artículo 490. Para cursar la apelación se requerirá la consignación, ante la secretaría del Tribunal Marítimo de primera instancia, de una caución que garantice el pago del monto de la condena más las costas. Para determinar el monto de la caución se considerará la caución consignada para levantar el secuestro o el valor del bien secuestrado. Dicha caución será consignada dentro de los diez días siguientes a la notificación de la providencia que admita el recurso. Si el apelante no consigna la caución de que trata este artículo, el juez declarará desierto el recurso."

In light of the above, the excessive requirement for a security deposit resulted in the judgment debtor's appeal being dismissed, thereby forfeiting its right to be heard.

FINDINGS OF THE GREEK COURT.

The Greek court recognized that while imposing a financial guarantee as a prerequisite for appeal can have legitimate justifications, such as discouraging vexatious litigation and promoting judicial efficacy, the circumstances in this case revealed that the requirement was manifestly disproportionate and unduly burdensome. The court articulated the following concerns:

– The required guarantee matched the total amount of the initial judgment plus costs.

– There was no cap, no exceptions, and no discretion for reduction based on the specifics of the case.

– It effectively forced the appellant to comply with the first-instance judgment in full just to access the appeal process.

The court referenced Article 323(5) of the Greek Code of Civil Procedure, which encompasses the public policy clause, confirming that the security requirement violated the principle of proportionality. Furthermore, limiting access to the court and undermining judicial protection directly contravened Article 6(1) of the ECHR and Article 20, paragraph 1 of the Greek Constitution.

Consequently, the obligation to deposit an amount of USD 44,397,715.97, which constitutes the awarded sum of the initial judgment (USD 41,248,107.88) plus legal costs (USD 3,149,608.09), was viewed as an untenable financial burden that contradicts the right to judicial protection.

More specifically, the imposition of a security deposit that equaled the judgment amount plus legal fees, with no statutory limits, exceptions, or discretionary reduction possibilities, violated public policy. This requirement substantially infringed upon the appellant’s right to access judicial remedies against an enforceable ruling.

Finally, the court noted that while Greek law allows for provisional enforceability of first-instance judgments under certain conditions, including the possibility of appeal suspension without a guarantee if there is a likelihood of success, such provisions were absent in Panamanian law.