Dubai Supreme Court Enforces Civil Compensation for Economic Loss Ordered in a Criminal Judgment Rendered by a Chinese Court



I. Introduction

The enforcement of foreign judgments can be regarded as one of the most crucial stages of international litigation. The inability to have a foreign judgment enforced not only undermines the effectiveness of judicial proceedings but may also render the entire process of cross-border litigation practically meaningless. Successful enforcement, however, depends on compliance with a number of fundamental requirements, which may vary depending on the applicable legal regime, notably on whether enforcement is sought under domestic law or pursuant to an applicable international convention.

In addition, not all foreign judgments are eligible for recognition and enforcement. In principle, only judgments dealing with private-law matters fall within the scope of recognition and enforcement, to the exclusion of judgments

relating to criminal or public-law matters. Certain exceptions may nevertheless exist. This is the case, for instance, where a criminal court orders civil compensation, such as compensation for economic loss suffered by the victim.

Against this broader background, a recent decision of the Dubai Supreme Court (*Maḥkamat at-Tamyīz* محكمة التمييز), rendered on *24 September 2026*, concerning the enforcement of an order for civil compensation for economic loss issued by a Chinese court, provides useful insights into the practical application of these principles and their relevance when the enforcement of foreign judgments is sought abroad.

II. The Facts

X1 and X2 (Chinese State-owned companies, jointly, "the respondents") sought the enforcement in the Emirate of Dubai, UAE, of an order for compensation for economic loss rendered in their favour by a Chinese court in criminal proceedings initiated against Y1 (the appellant) and Y2 (the third respondent) (both Chinese nationals, jointly, "the judgment debtors").

The respondents stated that they had attempted to execute the Chinese judgment in China but had been unable to locate sufficient assets belonging to the judgment debtors. This, they argued, justified bringing enforcement proceedings before the Dubai courts, where the judgment debtors' assets could be located. The Chinese judgment was subsequently declared enforceable, and this decision was upheld on appeal. Dissatisfied with the outcome, Y1 appealed to the Supreme Court.

Before the Supreme Court, Y1 challenged the appealed decision on several grounds, which can be summarised as follows: (1) Y1 had not been properly notified of the proceedings; (2) the Chinese court lacked indirect jurisdiction because the UAE courts had jurisdiction over the dispute; and (3) there were discrepancies in the parties' identities, notably between the names appearing in the translation of the foreign judgment and those of the parties to the enforcement proceedings in the UAE.

III. The Ruling

In its decision of 26 September 2026, the Dubai Supreme Court rejected all grounds of appeal and upheld the enforcement of the Chinese judgment in Dubai.

As is its usual practice, the Court first set out the applicable legal framework. It recalled that, under Articles 222 and 225 of the UAE Federal Civil Procedure Law, where an applicable international treaty governs the recognition and enforcement of foreign judgments, the treaty takes precedence over domestic law in determining the applicable conditions. The Court then reproduced the relevant provisions of **the 2004 UAE–China Convention on Judicial Assistance in Civil and Commercial Matters**, in particular Articles 15, 17, 20, 21, 23 and 24, before recalling the facts of the case and addressing Y1's arguments.

First, it dismissed the argument that Y1 had not been properly notified of, or legally represented in, the Chinese proceedings. Relying on the certified translation of the Chinese criminal judgment, the Court found that the judgment debtors had been aware of the proceedings and had appeared before the Chinese court.

The Court also confirmed the indirect jurisdiction of the Chinese court. It therefore rejected Y1's argument that the Dubai courts had exclusive jurisdiction because part of the alleged conduct, or its consequences, had occurred in Dubai. The Court noted that the offences concerned the misappropriation of funds belonging to two Chinese state-owned companies and that the assets involved included property belonging to the Chinese State.

Finally, the Court dismissed the objection concerning discrepancies in the parties' names, finding that these were merely the result of translation errors.

IV. Comments

While the outcome reached by the Court and its general approach may be welcomed, a few aspects of its reasoning deserve further comments.

First, the Court's reference to Article 15 of the 2004 Sino-Emirati Convention deserves some clarification. The Court referred to that provision and reproduced its content, although it does not appear to be directly relevant to the recognition or enforcement of foreign judgments. As its title clearly indicates, Article 15 concerns "Grounds for Refusing a Request for the Taking of Evidence", rather than the enforcement of foreign judgments. One possible explanation may lie in the wording of the Arabic version of the provision, which refers to "Cases in Which the Execution of a Request for the Taking of Evidence May Be Refused" (*ḥālāt jawāz rafḍ tanfīdh ṭalab al-ḥuṣūl ʿalā al-adilla* / حالات جواز رفض تنفيذ طلب الحصول على الأدلة). The use of the term تنفيذ (*tanfīdh*), which may refer to execution or enforcement depending on the context, may perhaps explain the Court's reference to this provision.

Secondly, the Court could have been more precise about the nature of the judgment whose enforcement was sought. The case concerned the enforcement of an order for compensation for economic loss made in criminal proceedings before a Chinese court, rather than the enforcement of the criminal aspects of the judgment as such. This distinction is important. The latter would not, as such, fall within the Convention's mechanism for the recognition and enforcement of foreign judgments. By contrast, the 2004 Sino-Emirati Convention expressly provides a basis for the enforcement of civil awards made by criminal courts. Article 17 covers judgments "in civil, commercial and personal status matters, *including judgments rendered by criminal courts in civil matters*" (emphasis added). It would therefore have been useful for the Court to make clear that it was enforcing the civil consequences of the Chinese criminal judgment, rather than the criminal judgment itself. This distinction is particularly important in light of a previous decision in which the same Court appears to have approved the enforcement of a foreign judgment declaring enforceable a criminal judgment rendered pursuant to a bilateral treaty between the State of origin (USA) and the requested State (Ontario – Canada) (on this case, see my comments on this blog here and here). The present case was legally different: the enforcement sought clearly concerned an award of compensation for economic loss made in the Chinese criminal proceedings, for which Article 17 of the 2004 Sino-Emirati Convention itself provided a specific basis.

Finally, and more importantly from a private international law perspective, the Court's treatment of the Chinese court's indirect jurisdiction is open to criticism.

While the Court was right to examine this issue, particularly in view of Y1's argument that the Dubai courts had exclusive jurisdiction, it did not assess the jurisdiction of the Chinese court by reference to the specific grounds of indirect jurisdiction provided for in Article 19 of the Convention. Remarkably, Article 19 was neither cited nor referred to in the Court's general discussion of the applicable legal framework. Instead, the Court contented itself with identifying a number of factors showing that the dispute had a close connection with China. These included the fact that the injured companies were Chinese entities, that the funds involved included assets belonging to the Chinese State, and that the damage concerned the property of Chinese companies, apparently in the absence of a genuine commercial transaction involving Dubai. These considerations may well support the conclusion reached by the Court. However, where the applicable treaty lays down specific grounds for determining the indirect jurisdiction of the court of origin, the enforcing court should assess that jurisdiction by reference to those treaty-based grounds rather than simply establishing that the dispute had a sufficiently close connection with the State of origin. The outcome may therefore be correct, but the reasoning would have been stronger and considerably more convincing had the Court applied Article 19 directly.

INTERNATIONAL CHILD ABDUCTION UNDER THE 1980 HAGUE CONVENTION A recent survey of Greek law [Russia / Bulgaria / USA]

I. Introduction

International child abduction constitutes one of the most complex areas of private international family law, as it lies at the intersection of the protection of family life, international judicial cooperation, and the need for the immediate protection of the best interests of the child. In order to address this phenomenon, the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction was adopted. The Convention was ratified in Greece by Law 2102/1992. Its purpose is not to resolve the substantive merits of custody disputes, but rather to restore the pre-existing status quo through the prompt return of the child to the State of his or her habitual residence.

II. The Decisions of the Thessaloniki Court of First Instance

The three decisions of the Thessaloniki Court of First Instance are of particular interest because they illustrate different aspects of international family disputes.The first decision (Thessaloniki Court of First Instance 6948/2025) constitutes a characteristic application of the Hague Convention, as it orders the return of a child to the State of habitual residence following the child's unilateral removal to Russia.

The second decision (Thessaloniki First Instance Court 7868/2025) examines the conflict between sole custody and the rights of a father who retains joint parental responsibility, highlighting the importance of foreign applicable law and the protection of children rights already established habitual residence.

The third decision (Thessaloniki First Instance Court f 5733/2025) differs substantially from the previous two, as it does not concern an unlawful international child abduction, but rather a request for lawful relocation, following prior judicial authorisation, examined in the light of Article 8 of European Convention on Human Rights (ECHR).

A comparative examination of these decisions provides an opportunity to assess the contemporary Greek approach to international child abduction and to examine the extent to which it is consistent with the case law of the CJEU, the ECtHR and

other foreign superior courts, particularly with regard to the concept of habitual residence, the application of the exceptions under Article 13 of the Convention and the realisation of the child's best interests.

I.

Issues for consideration

The first issue concerned whether the Greek courts had international jurisdiction, given that the child was now residing in Russia. The court accepted the international jurisdiction of the Greek courts, on the grounds that the relevant point in time for the application of the Hague Convention is the time of the wrongful removal. The child's removal to Russia had taken place while his habitual residence was still in Greece. Consequently, the transfer to Russia could not automatically establish new international jurisdiction in favour of the courts of the State to which the child had been wrongfully removed. This finding is fully consistent with the case law of the CJEU, which has repeatedly held that habitual residence must be determined on the basis of the actual situation existing before the removal, rather than the situation created by the wrongful removal itself (see, indicatively, CJEU, Case C-523/07). The Court held that habitual residence requires an assessment of the degree of the child's integration into a social and family environment (CJEU, Case C-497/10 PPU, Mercredi v Chaffe (2010)). The CJEU emphasised that particular consideration must be given to the duration and regularity of the stay, the reasons for the child's presence, and the child's family and social integration.

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b) Legal reasoning

The court found that the requirements of Article 3 of the Hague Convention were satisfied. In the present case, the child's habitual residence was Greece. The father was actually exercising his parental rights. He had not consented to the child's permanent relocation to Russia, and there was no judicial decision authorising a change of the child's place of residence. Accordingly, the removal was deemed wrongful.

c) Article 13 of the Convention

Of particular importance was the examination of whether the child's return would expose him to a grave risk. Article 13(b) permits the refusal of return where there is a grave risk of physical or psychological harm or where the child would otherwise be placed in an intolerable situation. The court rejected the application of this exception, holding that no actual and specific risk had been established. This finding follows the established judicial approach according to which the exception must be interpreted restrictively, since otherwise return proceedings would be transformed into substantive custody proceedings. The ECtHR has emphasised that the Convention requires a balance between the need for the prompt return of the child and the protection of the child against genuine risks. In this regard, see, indicatively, ECtHR, Neulinger and Shuruk v. Switzerland (2010). The Court stressed that return cannot be automatic where serious consequences for the child's private and family life are involved. However, subsequent case law clarified that Article 8 ECHR does not abolish the

mechanism established by the Hague Convention (ECtHR, X v. Latvia [GC], 2013). The ECtHR held that national courts must examine allegations of risk substantively, without replacing return proceedings with proceedings concerning custody.

d) The court's decision

The Thessaloniki Court of First Instance upheld the application for return, ordered the minor's return to Greece, found that there was no risk associated with the child's return and imposed measures to ensure the enforcement of its decision. The imposition of such measures is connected with the need for the effective implementation of the Convention, which does not merely require the theoretical recognition of the right to return, but also its actual enforcement.

e) Commentary.

The decision is of particular interest because it confirms the commitment of Greek case law to the fundamental purpose of the 1980 Hague Convention: restoring the situation that existed prior to the unilateral removal of the child. The following aspects are particularly significant:

1. a) Protection of habitual residence. The court did not allow the mother to create a new basis of international jurisdiction through the wrongful removal of the child.
2. b) Distinction between return proceedings and custody proceedings. The decision does not examine which parent is more suitable to raise the child. The substantive custody issue remains within the jurisdiction of the courts of the State of habitual residence.
3. c) The effectiveness need. The provision of sanctions in the event of non-compliance with the operative part of the judgment reflects the contemporary international judicial trend towards ensuring the practical effectiveness of return decisions.

f) Conclusion

The decision constitutes a representative application of the 1980 Hague Convention and follows the same interpretative framework as the case law of the CJEU and the ECtHR. A unilateral removal to another State cannot create legal

consequences or establish a new jurisdictional basis, nor can it automatically transfer jurisdiction to the State to which the child has been abducted. Furthermore, the exceptions to return require specific and substantiated grounds.

II. THESSALONIKI FIRST INSTANCE COURT 786/2025

Background – Claims of the parties.

Two opposing applications for interim measures were brought before the Thessaloniki Court of First Instance and heard jointly. They concerned a change of residence of two minor children and their return to Bulgaria. The children's parents are Greek nationals who had settled and worked in Sofia, Bulgaria, for several years. Their marriage was irrevocably dissolved by a judgment of a Bulgarian court, which awarded sole custody of the children to the mother, designated her residence in Sofia as the children's place of residence and regulated the father's right of contact. The mother requested authorisation to permanently relocate the children from Sofia to Thessaloniki, invoking economic, social and family reasons, as well as the children's best interests. She argued that she wished to return to Greece because she no longer maintained any significant ties with Bulgaria. She also relied upon alleged threatening behaviour on the part of the father. However, she had already transferred the children to Greece without the father's prior written consent or judicial authorisation. The father requested:

1. a) An order for the immediate return of the minors to Sofia (habitual residence).
2. b) An order temporarily requiring the mother to surrender the children's passports.
3. c) An order requiring the mother to pay his legal costs.

He argued that the unilateral relocation of the children had violated his custody and contact rights and that there was a risk of a further unauthorised relocation of the children to an unknown destination. The Court examined the the Greek Civil Code, Regulation (EU) 2019/1111, the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the 1996 Hague Convention on Parental Responsibility. In particular, pursuant to Article 1519(2) of the Greek

Civil Code, a change in the child's place of residence which substantially affects the right of contact of the parent with whom the child does not reside requires either the prior written agreement of the parents or a prior court decision. The concept of a change in the child's place of residence encompasses any change involving an element of permanence, even where it concerns a different neighbourhood, municipality, regional unit or country, provided that it substantially affects the exercise of the other parent's right of contact. A unilateral change without compliance with the statutory requirements may constitute an infringement of the other parent's custody and contact rights, as well as an improper exercise of parental responsibility. Furthermore, under Regulation (EU) 2019/1111, the child's habitual residence constitutes the fundamental criterion for determining international jurisdiction in matters of parental responsibility. In cases of wrongful removal or retention, jurisdiction remains with the courts of the State of the child's previous habitual residence, subject to the conditions laid down in the Regulation. In addition, Article 21 of the Regulation provides for the child's right to express his or her views in proceedings concerning the child, which must be taken into account in accordance with the child's age and maturity.

II.1. The Court's findings

Having examined the two opposing applications brought by the parents, the Court held that the mother had already transferred the minor children from Bulgaria to Greece with the intention of permanently settling them there, despite the father's express opposition and without obtaining his required consent or prior judicial authorisation. The relocation had taken place unexpectedly and during the school year, without any specific urgent circumstances having been established which could justify the immediate departure of the mother and the children from Bulgaria. The reasons invoked by the mother in support of the relocation, which primarily concerned economic and social circumstances, as well as the alleged threatening behaviour of the father, were not sufficiently substantiated. The Court emphasised that the award of sole custody of the minors to the mother did not entail the exclusive exercise of parental responsibility, nor did it confer upon her an independent right to decide unilaterally on a change in the children's place of residence where such a change substantially affected the other parent's right of contact. Consequently, the Court held that the mother could not seek retrospective judicial approval of a relocation that had already taken place,

without invoking specific and urgent reasons justifying her actions. As regards the father's application for the return of the minors, the Court held that it was legally admissible and substantively well-founded. An assessment of the evidence established that the children had been born and raised in Bulgaria, where they had lived for several years, attended school in Sofia and developed their social and friendship networks.

Furthermore, the mother continued to work for the same company in Bulgaria, a fact which did not support her allegations concerning the need for permanent relocation to Greece. At the same time, it was established that the sudden change in the children's place of residence had substantially hindered the father's exercise of his right to personal contact with them. Particular importance was also attached by the Court to its personal communication with the minor children, in order to ascertain their views and wishes. The children expressed their love for both parents, while simultaneously stating that they wished to remain in Greece. However, the Court considered that, given their age and degree of maturity, their views could not be regarded as entirely independent of the influence of their family environment. More specifically, the Court found that their preference for remaining in Greece was significantly associated with the fact that the school curriculum and the demands of the new educational environment appeared easier to them. Furthermore, the Court held that, at the time of the examination of the case, the minors had not acquired habitual residence in Greece, given that only a very short period had elapsed since their relocation. On the contrary, their family, educational and social lives remained closely connected with Bulgaria, where they had been born and raised, had developed their social environment and maintained their school and extracurricular activities.

The Court concluded that the unilateral removal and retention of the minors in Greece, without the father's prior written consent or the required judicial authorisation, violated his custody and contact rights and constituted wrongful removal within the meaning of the 1980 Hague Convention and Regulation (EU) 2019/1111. In particular, the return of the minors to Sofia was considered to serve their best interests, since it would restore their previous daily routine, enable their reintegration into their familiar school and social environment, and safeguard the effective preservation of their personal and emotional relationship with their father. Accordingly, the Court dismissed the mother's application for authorisation to change the children's place of residence from Bulgaria to Greece

and partially upheld the father’s application. More specifically, it ordered the immediate return of the two minor children to their place of habitual residence in Sofia, Bulgaria, and ordered the mother to pay the father’s legal costs.

III. International Relocation of a Child

1. General remarks

The decision of the Thessaloniki First Instance Court 5733/2025 is of particular interest because it differs substantially from cases of international child abduction under the Hague Convention. Whereas in the preceding decisions the central issue concerned the wrongful removal of a child without the consent of the other parent, the present case concerns the lawful change of a child’s place of residence following judicial authorisation. The decision therefore falls within the field of family law rather than the strict return mechanism established by the Hague Convention.

2. Factual background

The case constitutes a continuation of a lengthy dispute between the parties concerning the exercise of parental responsibility and custody of a minor child. The dispute had developed within two legal systems: that of the United Kingdom and that of Greece. Initially, the English courts had assumed jurisdiction over the dispute and issued a decision concerning the child’s custody. The decision was subsequently recognised in Greece following the relevant proceedings for the recognition of a foreign judgment.

The applicant, who had the status of the child’s psychological mother (that is, the person who had, in practice, assumed the parental role and developed a substantial caregiving relationship with the child), had previously obtained permission from the English courts to relocate to Thessaloniki. The authorisation was granted because the applicant was experiencing difficulties in securing employment in the United Kingdom, and it was considered that relocation to Greece could better serve the stability of both her life and the child’s life. However, following their settlement in Thessaloniki, the applicant encountered further difficulties. Her expected professional rehabilitation did not materialise. Problems also arose from the conduct of the respondent in the workplace, and a

dysfunctional environment developed which affected the family's everyday life. In light of these circumstances, the applicant submitted a further request for a change in the child's place of residence, this time proposing relocation to the United States.

3. The central legal issue

The Court was not called upon to determine whether an unlawful removal had taken place. The principal question was whether the temporary change in the child's place of residence from Greece to the United States served the child's overriding best interests and whether the child's relationship with the biological mother would be protected.

4. Application of Article 8 ECHR

The ECtHR has repeatedly held that, in custody and child relocation disputes, national courts must strike a fair balance between t, he child's best interests, the rights of each parent, and the need to preserve meaningful family relationships [In this regard, see indicatively, ECtHR, Neulinger and Shuruk v. Switzerland (2010)]. The ECtHR emphasised that the child's best interests constitute a primary consideration in family disputes. However, this judgment does not mean that every request for relocation must automatically be accepted. An individualised assessment is required.

5. The importance of a child psychiatric assessment

A particularly significant feature of the decision is the use of a specialised child psychiatric assessment. The Court did not confine itself to the allegations made by the adults, but also examined the child's emotional condition, relationship with the parents and ability to adapt to a new environment. The psychological assessment indicated that the child viewed the prospect of relocation positively and displayed no signs of fear or pressure. It was therefore considered that the child could adapt to the new circumstances.

6. Hearing the child before the Court

Particular weight was attached to the Court's personal communication with the minor. The child's right to be heard has now become a fundamental principle of ontemporary family law. The Court assessed the child's wishes as spontaneous, consistent with her age and maturity, and not the result of manipulation.

7. Absence of parental alienation

Acrucial factor was that no intention on the part of the applicant to alienate the child from the biological mother had been established. The Court examined whether relocation to the United States would constitute an attempt to exclude the other party from the child's life. On the contrary, it took into account the following considerations:

- The child had maintained a relationship with the mother.
- There were no indications of manipulation.
- The relocation was not intended to sever the existing parental bond.

This factor is particularly important because, in international child relocation cases, the court must distinguish between a genuine attempt to secure better living conditions and a strategic attempt to distance the child from the other parent.

8. Factors supporting the approval of relocation

The Court took into consideration a series of factual elements:

1. a) Linguistic daptation: The child was fluent in English. This was considered important for reducational adaptation, social integration, and reducing the psychological impact of the change.

b). Family environment in the United States The respondent was a US citizen and maintained family ties in the United States. Her parents resided in the United States, and the child would have the opportunity to maintain contact with a wider family network.

1. c) The child's wishes. The minor appeared positive and enthusiastic about the proposed relocation. Her wishes did not constitute the sole

determining criterion, but they represented an important element of the overall assessment.

CJEU in Marwanak C-873/24 on the interpretation of the Succession Regulation in light of its objectives

In its judgment C-873/24 Marwanak, 22 October 2026, ECLI:EU:C:2026:887, the Court of Justice of the European Union (CJEU) ruled on the interpretation of the Succession Regulation (Regulation 650/2012 on matters of succession and the creation of a European Certificate of Succession). Specifically, the CJEU addressed the question of whether the applicants for issuing a European Certificate of Succession had the right to request (and the issuing authority had an obligation to ensure) that the Certificate included an identification of the immovable property that forms part of the estate and is located in a country other than the State of the issuing authority. The CJEU answered this question in the affirmative, interpreting the Succession Regulation in light of the purpose of the European Certificate of Succession and the regulation's broader objectives.

1. Facts and procedural history

Application for a European Certificate of Succession

In 2013, a testator and his spouse executed a joint will. In the will, they designated each other as the sole beneficiary of the one who died first and stipulated that their daughter would inherit from the surviving spouse. The testator died in 2015, his daughter died in 2019, and his spouse died in 2022. The deceased's last habitual residence was in Germany. His estate included immovable property located in the Czech Republic. The five children of the testator's deceased daughter submitted an application for the issuance of a European Certificate of Succession (the 'Certificate') to the *Amtsgericht Fürth* (Local Court, Fürth, Germany).

Request to identify immovable property

Their application included, inter alia, a request to identify the immovable property in the Czech Republic in the Certificate, because such identification was required for the succession to be recorded in the land register in the Czech Republic. This request was dismissed.

The applicants appealed the dismissal before the *Oberlandesgericht Nürnberg* (Higher Regional Court, Nuremberg, Germany). The latter confirmed the dismissal, considering that a 'purely informative reference to specific assets (…) does not contribute either to the presumptive effect or to the protection of legitimate expectations' under the Regulation. The court stated as well that such identification 'would be contrary to the objective of that regulation, which is to create a uniform instrument, capable of being used easily in all the Member States.' More specifically, as the court recalled, the Succession Regulation does not require the issuing authority to verify whether the deceased owned a specific asset at the time of death. Consequently, according to the *Oberlandesgericht Nürnberg*, 'the security of transactions could be compromised if mere declarations by an heir were reproduced in that certificate and were thus given an official appearance of authenticity' (at [26]). The applicants challenged this dismissal before the *Bundesgerichtshof* (Federal Court of Justice, Germany).

Diverging views

The *Bundesgerichtshof* observed that scholars were not unanimous on this question. According to one view, the identification of assets would not be needed if the suggestion is governed by German law to the extent it entails universal succession (at [28]), and would be needed only in the situation where the

succession is governed by foreign law while the application is submitted by several heirs, one of whom 'intends to establish his or her rights in respect of assets attributed to him or her individually' (at [28]).

According to another view, based on the CJEU ruling of 9 March 2023, *Registrų centras* (C-354/21, EU:C:2023:184), the objective of issuing the Certificate should enable private parties to settle the succession, while this objective supports the specification of assets in the Certificate.

Practical concerns

According to the *Bundesgerichtshof*, opting for the second reading might entail additional time and costs in the procedure for issuing the Certificate. If the issuing authority has doubts as to whether a specific immovable property forms part of the estate, it might need to obtain legal advice or translations of documents and gather evidence to verify the relevant information. This verification can entail delays in the proceedings and additional costs (at [29]).

To clarify the matter, the *Bundesgerichtshof* submitted three questions for a preliminary ruling to the CJEU.

2. Questions referred for preliminary ruling (at [32])

In Question 1, the Bundesgerichtshof enquired whether Article 68(1) of the Succession Regulation requires that a Certificate must contain

> 'the information required under the national law of the State in which the property is located for the recording of the heir as its owner in the land register in respect of immovable property forming part of the estate and located in a Member State other than the State of the issuing authority where the heir has requested that such information be included [in that certificate] for the purposes of recording him or her as its owner (…) and where if [that certificate] is the only document presented in support of the application for registration, the recording, under the national law of the State in which the property is located, in the land register of that State can take place only if [that certificate] contains such information.'

Question 2 was whether the answer to Question 1 is different in a situation where the transfer of estate takes place by way of universal succession under the law

governing the succession.

Question 3 was whether the answer to Question 1 is different if the heirs can obtain the recording in the land register by presenting another ‘document containing a declaration by the heir, or, after his or her death, by his or her heir, to the land registry of the State in which the property is located in addition to presenting’ a Certificate ‘that does not contain the information referred to in Question 1’

3. The ruling

Question 1

Certificate: autonomous regime and variable, purpose-driven content

The CJEU answers Question 1 in the affirmative. The answer is based on an interpretation of the Succession Regulation in light of its objectives, primarily the objective to effectively guarantee the rights of private persons involved in a succession with cross-border implications.

The reasoning starts with a reminder that the Regulation (in particular its Chapter VI) establishes an autonomous regime for the content of the Certificate. Within this autonomous regime, according to Article 68 of the Succession Regulation, the content of the Certificate should be determined inter alia by reference to the ‘purpose for which it is issued’ (at [34]). Furthermore, the CJEU contends that a number of other provisions and Recitals of the Succession Regulation explicitly refer to the purpose of the Certificate. In this regard, the CJEU notes that Article 68 of the Succession Regulation ‘lays down a minimum amount of information that must be included in that certificate’. However, as the purpose of the Certificate may vary from case to case, so may the content of the Certificate.

The CJEU concludes, therefore, that the issuing authority is required to include information identifying the immovable property in the Certificate in a situation where the incomplete nature of the Certificate (as in the present case) may preclude registration in the land register, as this reading of the Succession Regulation is entailed by the objective of effectively guaranteeing the rights of heirs across Member States.

Practical concerns dismissed

Although the CJEU shares the concerns about the difficulties (relating to possible costs and delays that may be entailed by the need to verify whether a specific asset belonged to the deceased), these difficulties cannot call into question the answer to Question 1. The CJEU refers in this regard to the availability of the mechanisms established by the EU legislature for investigating and transmitting information between competent authorities that might help overcome the practical difficulties (at [54]).

Evidentiary effects

Aside from the practical concerns, the CJEU pays attention to the evidentiary effects of the Certificate in which the immovable property is identified. The CJEU reminds that, in accordance with Recital 71 of the Succession Regulation, the evidentiary effects of the Certificate 'should not extend to the question whether a specific asset belonged to the deceased's estate' (at [57]). This matter falls outside the scope of the Succession Regulation provided in Article 1. According to the CJEU, the Succession Regulation may *not be interpreted as imposing an obligation* to certify elements outside the scope of the Succession Regulation, such as the question whether a specific property actually belonged to the deceased (at [62]).

What are then the exact requirements imposed by the Succession Regulation? The Certificate 'is presumed to demonstrate accurately only elements which have been established under the law applicable to the succession, designated by the provisions of Chapter III', as the CJEU states at [59], with references to Article 69(2) and Recital 71 of the Succession Regulation. Accordingly, in principle, Articles 66 and 67 of the Succession Regulation requires the issuing authority to verify the information, declarations or evidence provided by the applicants (at [60]), but it should issue the Certificate only if there are no challenges to the elements to be certified, as the CJEU has already considered in the case *Albausy,* Case C-187/23, ECLI:EU:C:2025:34, January 25, 2025 (at [61]); see also here. The CJEU holds that

> 'the issuing authority is required to indicate, in the European Certificate of Succession, the information which permits the identification of immovable property forming part of the succession concerned where the purpose for

which that certificate is issued so requires, even though that obligation may involve, where appropriate, carrying out the necessary checks with regard to the elements to be certified. In addition, that authority must refuse to issue that certificate where there are challenges relating to those elements.' (at [63]).

Question 2

The answer Question 1 remains unchanged, even if the law governing the succession provides for transfer by universal succession. The CJEU comes to this conclusion by recalling that the Succession Regulation establishes an autonomous regime for the Certificate. According to the CJEU, the interpretation of the autonomous regime should not vary depending on the law governing the succession.

At first sight, this consideration resembles the CJEU's considerations stated at the beginning of its answer to Question 1. On closer reading, it appears that, according to the CJEU, the *content* of the Certificate may vary depending on the *purpose* for which it is issued in a specific case. By contrast, the *interpretation* of the autonomous regime for the Certificate may not depend on (the content of) the *law governing* a specific succession. This distinction is logical but abstract and delicate.

Question 3

To answer Question 3, the CJEU refers to Article 68(1) along with Recitals 7, 18, 67, and 80 of the Succession Regulation. The CJEU rules that the Certificate must contain all the necessary information for the heirs to establish their rights in the Member State where the succession property concerned is located (at [88]). Therefore, the issuing authority is not exempt from an obligation to include in the Certificate the 'information permitting the identification of immovable property forming part of the succession, where the reference to that information is sought for the purposes of an entry in the land register of the Member State in which that property is located' even in a situation where 'under the law of that Member State, that entry may be obtained on the basis of a supplementary document, submitted together with a European Certificate of Succession that does not contain such a reference.'

To conclude, the case *Marwanak* provides an example of a reasoning in which, in

order to apply the Succession Regulation – an act of EU law that is directly applicable, as the CJEU explicitly recalls at [71] – to diverging domestic systems to settle a cross-border succession, the CJEU searches for (and finds) flexibility in the interpretation of the Succession Regulation in light of its objectives and the purpose of the specific provisions interpreted.

Enforcing China's Statutory Post-Judgment Interest in Other Jurisdictions

This post was written by Meng Yu and Wenliang Zhang. The authors would like to thank Prof. Bill Dodge for his helpful comments on the draft.

I. Introduction

China's post-judgment double interest (加倍迟延履行利息) has garnered attention in cross-jurisdictional enforcement proceedings. There is nonetheless no fully uniform global approach to this interest component. Aligning with the positions of United States and Australian courts, English courts have on two occasions recognized and enforced PRC monetary judgments along with the interest accruing under Article 253 (now Article 264) of the PRC Civil Procedure Law—first in Hangzhou Jiudang Asset Management Co Ltd & Anor v Kei [2022] EWHC 3265 (Comm) and again in Qing Li & Ors v Fan Demetris Yuan & Anor [2026] EWHC 242 (Comm). Notably, courts in these jurisdictions rely on distinct legal doctrines to justify the enforcement of China's post-judgment double interest. A stark contrast emerges in Hong Kong, where courts have characterised this interest as penal in nature and thus ineligible for registration, as exemplified by the recent Hong Kong judgment [2026] HKCFI 5896.

A comparative review of domestic post-judgment interest regimes across England

(8% p.a.), Australia (RBA cash rate + 6%), Hong Kong (the gazetted judgment rate), and the United States (one-year Treasury rate) shows that China's double post-judgment interest, set at 0.0175% per day (≈6.39% p.a.), falls within the moderate-to-low range. Methodologically, Australian and U.S. courts have deployed the traditional "compensate or punish" dichotomy to uphold China's double post-judgment interest. By contrast, English courts in *Hangzhou Jiudang* embraced a deterrence rationale but enforced the interest under the modern "legitimate interest plus proportionality" doctrine—a "third way" that accommodates the Chinese legislature's own dual-function characterisation of the regime. Hong Kong stands as the only common-law outlier. The dividing line is no longer geographic but doctrinal; a precise label assists the enforcing court in recognising, within a foreign statutory provision, a concept familiar to its own jurisprudence. This commentary argues that China's double post-judgment interest is non-penal and enforceable, and that it warrants an accurate nomenclature. Drawing on the two English cases noted above, it further contends that while "default interest" marks an improvement as a descriptor, it gives rise to two new misinterpretations: it may be read as contractual breach interest, or as importing a merely "presumed" rate. This comment therefore proposes the functionally accurate label: Statutory Post-Judgment Interest (SPI).

II. When English Courts Saw Through the So-called "Double Interest"

In our previous comment ("PRC Double Interest neither Double nor Penal, Australian Courts Clear Its Name When Enforcing Chinese Judgments")[1], we examined how Australian courts, across *Zhengzhou Lvdu Real Estate Group Co v Shu* [2024] NSWSC 58, *Fu v Pang* [2025] VSC 597 and *Shanghai Chenggong Industrial Co Ltd v Zhihua Chen* [2025] NSWSC 1112, dismantled the "double interest being penal and hence unenforceable" defense and enforced Chinese monetary judgments in full. The English story begins two years earlier, in 2022, and it deserves telling in its own right — because the English courts reached the same destination by a noticeably different doctrinal route.

1. *Hangzhou Jiudang* (2022): two Chinese judgments enforced, with the misnomer diagnosed

In *Hangzhou Jiudang Asset Management Co Ltd & Anor v Kei* [2022] EWHC 3265 (Comm), the English High Court enforced two Chinese monetary judgments rendered by the Hangzhou courts, Zhejiang Province, totaling GBP 14,320,174.45

— the first reported English decision enforcing PRC monetary judgments. The Chinese courts had awarded principal plus contractual interest (in one case at the then-statutory cap of 24% per annum) and appended the standard operative words: should the defendants fail to pay within the specified period, "double interest of the debt" would accrue during the delayed performance period pursuant to then Article 253 of the PRC Civil Procedure Law.

The defendant raised four defenses: (i) the interest had been miscalculated; (ii) the judgments were rendered unenforceable in their entirety by s.5 of the PTIA; (iii) the default interest portions were unenforceable under s.5 of the PTIA; and (iv) the default interest portions were unenforceable as penalties at common law. All defenses failed.

On the threshold question of what Article 253 actually does, the English court — two years before the New South Wales Supreme Court of Australia in *Zhengzhou Lvdu* (2024) — diagnosed the translation problem: whilst the judgments (as translated) required payment of "double interest of the debt", "in fact that reference to 'double' is a misnomer" (at [39]). The expert evidence explained that the character used in Article 253 could mean "double the original amount" but could also mean "to a greater extent", and that the 2014 Interpretation by China's Supreme People's Court (SPC) on Several Issues concerning the Applicable Law for Calculating the Interest of Debt on Delayed Performance in Enforcement Procedures" (hereinafter the "SPC Interpretation")[1] adopted the latter. The SPC Interpretation settled on a scheme "whereby the interest accruing during a default period included both (i) the contractual interest, and (ii) the default interest, with the latter being at a fixed rate multiplier of 0.0175% per day" — annualizing at 6.39%, the equivalent of the historical PBOC benchmark lending rate of 6.4%.

2. ***Qing Li* (2026): five Chinese judgments enforced, with a label "default interest" quietly adopted**

In *Qing Li & Ors v Fan Demetris Yuan & Anor* [2026] EWHC 242 (Comm) — the second reported English recognition case — the English High Court enforced five Chinese judgments rendered by the Nanjing courts of Jiangsu Province between May and December 2017, for a combined RMB 240 million (approx. GBP 25 million).

The “default interest” — described in the judgment as “an additional amount imposed by PRC statute in the event of late payment” — was not even disputed: the defendants abandoned three of their four defenses, leaving only the issue of indirect jurisdiction. The English High Court found that Chinese courts had jurisdiction under principles of English private international law, mainly because (1) in two cases, the parties had agreed to submit to the jurisdiction of the Chinese courts, and (2) in all five cases, the defendants maintained their residence in Nanjing, China, under PRC law and as a matter of English law.[2]

Re-affirming the classic common law requirements for enforcement of foreign judgments — a final and conclusive judgment, given by a court regarded by English law as competent, for a fixed sum of money[3] — the Court also stressed that English courts “will not re-examine the merits of the decision (whether as to fact or law)”. The Chinese courts’ interest determinations — be it a 2% monthly rate (the then 24% p.a. cap under Chinese law), a 15% p.a. rate, or liquidated damages judicially reduced to four times the Loan Prime Rate (LPR) — were accordingly enforced untouched.

As a side note, a third reported UK decision enforcing Chinese judgments, *Xiong Wei & Anor v Wang Junhong* [2026] EWHC 1892 (Comm), disposed of the interest element with the briefest of passing references (“plus interest calculated in a specified manner”) and adds little analytical value for the topic of this comment, despite addressing the important “finality” issue with Chinese retrial judgments. As seen in the latter two cases in which English courts ordered enforcement of Chinese judgments, default interest no longer raises public policy concerns. Given that the public policy defence may be invoked *ex officio*, the English courts’ reluctance to entertain objections to default interest demonstrates that this issue is now settled: such post-judgment default interest is enforceable regardless of its label.

III. Is “Default Interest” a Better Name? A Cure That Risks Becoming a New Misnomer

If “double interest” is an arithmetic misdescription, is “default interest” the cure? It seems to be an improvement, but only half a step forward. A more precise label cannot change the nature of default interest under Chinese law; nonetheless, greater clarity in nomenclature reduces the risk of misinterpretation. Along this line of reasoning, it is worthwhile to examine what would constitute a more

suitable designation.

First, “default interest” already has a settled meaning in contract law: interest payable upon a debtor’s default in performing a monetary obligation. A foreign reader can easily conflate the statutory judgment interest with contractual default interest under the underlying loan. The true trigger—non-compliance with the court’s payment timetable—is precisely what the label conceals. As the English court observed in *Hangzhou Jiudang* (2022), the sum is “awarded by virtue of an entirely separate breach, due to a decision of the court and the Chinese legislature to impose a requirement designed to incentivize compliance with Court orders” (at [39]).

Second, “default” in frequently denotes a presumption that yields to contrary agreement (“default rules”). That sense invites the wrong question: may the parties contract out of the rate? In fact the mechanism is a non-derogable statutory incident of an effective monetary judgment; it applies regardless of the parties’ agreement and accrues on top of whatever general debt interest the judgment specifies.

The label worked in England because it resonates with domestic vocabulary—English statute itself provides for “default interest” on judgment debts under s 17 of the Judgments Act 1838. That functional familiarity is exactly why the label may mislead elsewhere. It is a local bridge, not a universal name.

IV. What Lies Behind the Label: The English Reasoning on the “Penal” Question

The doctrinal interest of *Hangzhou Jiudang* lies in how the court disposed of the penal and public-policy challenge while accepting that the Chinese interest mechanism had a deterrent purpose—a different route from the Australian courts’ compensatory characterization.

Under *Dicey, Morris & Collins on the Conflict of Laws*, a foreign money judgment is unenforceable if it is for taxes, fines or other penalties; but “[a] penalty in this sense normally means a sum payable to the State, and not to a private claimant, so that an award of punitive or exemplary damages is not penal”.[4] Multiple damages – the antitrust or RICO treble-damages – may nevertheless be regarded as penal where the foreign court’s purpose is punishment. The English court accepted expert evidence that the rationale of the Chinese provision was “to

punish the debtor for late payment and to incentivize prompt payment" (at [45]), and held that neither rationale was purely compensatory. Yet accepting a deterrent purpose did not preclude enforcement.

The decisive move was to apply the modern law on penalty clauses. The law has moved on since *JSC VTB Bank v Skurikhin* [2014] EWHC 271 (Comm). The English court opined that an obligation that acts as a deterrent is enforceable if there is a legitimate interest in deterring the breach and the "provision is not extravagant or unconscionable in proportion to that interest" (at [57]). When it comes to the enforcement of foreign judgments: even if foreign law applies interest that does not represent a genuine pre-estimate of loss, there is plainly a legitimate interest in both encouraging judgment debtors to discharge their liabilities and compensating a claimant for being kept out of money. Where the rate is not manifestly excessive—as is true in this case (given the Chinese rate of approximately 6.4 % p.a. is lower than England's own statutory rate of 8 % p.a. under s 17 of the Judgments Act 1838)—no sensible public-policy objection can be maintained.

On the PTIA itself, the court held that the Chinese interest is not a "multiplier of the compensation awarded at all" (at [39]). It is a sum awarded by virtue of an entirely separate post-judgment breach. To treat it as a multiplier would absurdly invalidate every judgment that carries post-judgment interest. The PTIA, enacted to counteract perceived excesses of US antitrust jurisdiction, is simply not applied there.

The English court concluded that the Chinese provisions pursue a legitimate policy aim and that an English court "should not seek to be overly astute to pass a negative judgment on such aims" (at [61]). This accommodates the Chinese legislature's own dual-function description of the mechanism[5]—compensation plus moderate deterrence—without forcing it into a rigid "compensate or punish" dichotomy. It is the doctrinal "third way" anticipated in the previous comment (see "PRC Double Interest neither Double nor Penal, Australian Courts Clear Its Name When Enforcing Chinese Judgments").

V. SPI: A Proper Name, and a Comparative Reality Check

We therefore propose naming the mechanism SPI—equivalently, Statutory Interest on Judgment Debts. The name states each of its essential features: its

source (statute—Article 264 of the 2023 CPL, operationalized by the 2014 SPC Interpretation), its object (the judgment debt), its trigger (delayed performance beyond the period specified in the judgment), and its relation to the judgment-determined interest (additional, not substitutive).

For the avoidance of doubt, Article 264 interest comprises two layers: (1) the "general debt interest" (post-judgment interest as determined by the effective legal document — in loan cases, the contractual rate as confirmed or adjusted by the court); and (2) the SPI (the "double part"), which is calculated as outstanding monetary debt (excluding general debt interest) × 0.0175 % per day × delayed performance period.

SPI has cousins everywhere money judgments are enforced:

Jurisdiction	Legal basis	Current rate
Mainland China - Statutory Post-judgment Interest	Art. 264 of PRC Civil Procedure Law 2023; SPC 2014 Interpretation	0.0175 %/day ≈ 6.39 % p.a. (fixed)
England & Wales- Interest on judgment debts[6]	Section 17 of the Judgments Act 1838 (JA 1838), Judgment Debts (Rate of Interest) Order 1993, SI 1993/56	8 % p.a. (fixed since 1993)
New South Wales (Australia)-Post-judgment interest[7]	Section 101 of Civil Procedure Act 2005(NSW); Rule 36.7 of the Uniform Civil Procedure Rules 2005 (NSW)	6% + Reserve Bank of Australia (RBA) cash rate (recently 10.35 % p.a.)

Hong Kong-Interest on judgment debts[8]	Section 49(1) of the High Court Ordinance, Cap. 4 or Section 50(1) of the District Court Ordinance, Cap. 336 of the Laws of Hong Kong	Gazetted judgment rate (≈ 8 %+)
United States (federal) – Post judgment interest[9]	28 U.S.C. § 1961	1-year Treasury constant maturity (≈ 4 %)

China's SPI thus sits at the moderate-to-low end: below England's fixed 8 %, far below Australia's current double-digit rate, and above only the floating US Treasury-linked rate for US federal post-judgment rate. Under any "manifestly excessive" or proportionality test the Chinese rate is unimpeachable on its face.

The existence of a domestic analogue—England's interests on judgment debts under the Judgments Act 1838, Australia's UCPR post-judgment interest—makes the Chinese mechanism easy for common-law courts to understand and accept. Naming it SPI operationalizes that insight: when a judgment creditor pleads the claim as "statutory post-judgment interest", the enforcing court is invited to see the familiar rather than the foreign.

The United States has addressed the question at least twice—and both times under the forum's own law, which is where characterization always happens: whether a foreign judgment is penal "is a question of U.S. law" (*Huntington v. Attrill*, 146 U.S. 657, 683 (1892); Restatement (Fourth) of Foreign Relations Law § 489 cmt). Contrary to first impressions, penal character is highly relevant under U.S. law—not as a ground for non-recognition, but at the threshold: both the 1962 and the 2005 Uniform Acts exclude penal judgments from their scope (1962 Act § 1(2); 2005 Act § 3(b)), a rule the Restatement (Fourth) restates in § 489, and the creditor bears the burden of bringing the judgment within the Act.

In the US, the classic Huntington test is the traditional dichotomy: a judgment is penal only if its "purpose is to punish an offence against the public justice of the

State" rather than "to afford a private remedy to a person injured by the wrongful act" (Restatement (Fourth) of Foreign Relations Law § 489 cmt). Applying that test, two California federal courts enforced Chinese judgments together with the Article 253 "doubled interest" (*Anyang Xinyi Elec. Glass Co. v. B & F Int'l (USA), Inc.,* 2015 WL 12859716 (C.D. Cal. Nov. 24, 2015), and *Wuxi Powerbit Data Tech. Ltd. v. BiTMICRO Networks, Inc.,* 2023 WL 4995720 (N.D. Cal. June 9, 2023), R&R adopted, 2023 WL 4995719 (N.D. Cal. June 30, 2023). Both reasoned that the interests payable to the private creditor are "not a fine or penalty", treating it as ordinary "post-judgment interest" (see also *Hyundai Securities Co. v. Lee*, 232 Cal. App. 4th 1379 (2015), which had upheld a 20% Korean statutory post-judgment interest rate). Methodologically, the United States thus stands with Australia in the traditional "compensate or punish" camp—while England's Hangzhou Jiudang case charts the proportionality-based third way.

However, that same dichotomy yields enforcement in Australia and the US, resulted in refusal in Hong Kong, showing that the risk for SPI lies not in the mechanism but in the analytical framework. Although Hong Kong maintains its own SPI regime (currently around 8 %, with discretion to award higher), the Court of Appeal in *Hung Fung Enterprises Holdings Ltd v The Agricultural Bank of China* [2012] HKCA 251 opined that Mainland Chinese SPI – "double interest" imposed under Article 264 of Civil Procedure Law (2023) (formerly numbered Article 260 of 2021 CPL)- was a penalty not enforceable by the Hong Kong Courts. In later cases,[10] to assess how the Hong Kong law determines whether a sum is a penalty or compensation, the Hong Kong Court believes that the "essence is whether the sum bears any relation to the loss suffered".[11] The obstacle is doctrinal rather than functional.[12] Creditors in future Hong Kong proceedings might do well to present the mechanism expressly as SPI and to confront the precedent of *Hung Fung* with the English and Australian authorities.

The deeper drift is methodological. The old question — does it compensate or punish? — trapped mixed-purpose mechanisms in a false dichotomy; the emerging question — is it a proportionate pursuit of a legitimate interest? — lets them pass. The English route validates the "third way" the first comment anticipated, and it comfortably accommodates the Chinese legislature's own dual-function description of the mechanism.

Naming, in the end, is not cosmetic in recognition and enforcement practice. A functionally accurate name reduces the risk of misdescription, anchors the

foreign mechanism in the forum's own law, and shortens the distance between the foreign statute and the enforcing court. Most importantly, appropriate naming embodies its inherent essence. The misnomer has now been doubly cured: Australian and English courts have established that the interest is neither double nor penal in the relevant sense. Courts in other jurisdictions shall follow suit. What remains is to call it by its right name — Statutory Post-Judgment Interest — so that the next enforcing court recognizes, in a foreign statute, its own. Then foreign courts enforce Chinese post-judgment interest, out of both recognizing the essence of such interest (i.e., not punitive) and a proper nomenclature.

[1] Interpretation by China's Supreme People's Court on Several Issues concerning the Applicable Law for Calculating the Interest of Debt on Delayed Performance in Enforcement Procedures, Fa Shi (2014) No. 8, 7 July 2014.

[2] The English court held that "the evidence of the Defendants' residence in and connection to Nanjing and the PRC prior to and throughout 2016 and into early 2017 is strong, and more likely than not" (at [79]), and that "the evidence of their actual presence in Cyprus and the quality of that presence is very limited" (at [85]), despite the defendants' Cypriot permanent residence and, later, Cypriot nationality.

[3] See Dicey, Morris & Collins on the Conflict of Laws (16th edition, Sweet & Maxwell), at 14R-024.

[4] Dicey, The Conflict of Laws, 16th Ed. Rule 42(1) at 14R-020.

[5] For the views of China's legislature and judiciary, see the Legislative Affairs Commission of the Standing Committee of the National People's Congress (ed.), *Explanation of the Civil Procedure Law of the People's Republic of China* (Beijing: Law Press China, 2nd edition, 2012), p. 590; Civil Law Office of the Legislative Affairs Commission of the Standing Committee of the National People's Congress (ed.), *Explanations of Articles, Legislative Rationale, and Relevant Provisions of the Civil Procedure Law of the People's Republic of China* (Beijing: Peking University Press, 2nd edition, 2012), p. 398; and the *Official from the Enforcement Bureau of the Supreme People's Court Answers Reporters' Questions,* People's Court Daily, 31 July 2014, available at https://www.chinacourt.cn/article/detail/2014/07/id/1354917.shtml.

[6] https://www.legislation.gov.uk/uksi/1993/564

[7]
https://localcourt.nsw.gov.au/about-us/jurisdictions0/civil-jurisdiction/interest-rates.html

[8] https://www.judiciary.hk/en/court_services_facilities/interest_rate.html

[9] https://www.uscourts.gov/court-programs/fees/post-judgment-interest-rate

[10] See *Foshan Nanhai Branch of Industrial and Commercial Bank of China Ltd v Foshan Ruifeng Petroleum and Chemical Fuel Co Ltd* [2019] 2 HKLRD 478, *Tianjin Financial Investment Services Group v Jinan Muhe Enterprise Management Co Ltd & Ors* [2025] HKCFI 6182, *Industrial Bank Co., Ltd., Ningbo Branch v Ningbo Baifeng Mineral Processing Co., Ltd. & Ors* [2026] HKCFI 2455, and *Letui (Shanghai) Cultural Communication Co., Ltd. v. Shenzhen Mega Combine Technology* Co.,Ltd & Ors [2026] HKCFI 3204.

[11] *Tianjin Financial Investment Services Group v Jinan Muhe Enterprise Management Co Ltd & Ors* [2025] HKCFI 6182, at [33].

[12] See *Hung Fung Enterprises Holdings Ltd v The Agricultural Bank of China* [2012] HKCA 251, *Foshan Nanhai Branch of Industrial and Commercial Bank of China Ltd v Foshan Ruifeng Petroleum and Chemical Fuel Co Ltd* [2019] 2 HKLRD 478, *Tianjin Financial Investment Services Group v Jinan Muhe Enterprise Management Co Ltd & Ors* [2025] HKCFI 6182, *Industrial Bank Co., Ltd., Ningbo Branch v Ningbo Baifeng Mineral Processing Co., Ltd. & Ors* [2026] HKCFI 2455, and *Letui (Shanghai) Cultural Communication Co., Ltd. v. Shenzhen Mega Combine Technology* Co.,Ltd & Ors [2026] HKCFI 3204.

Recognition and Enforcement of Foreign Judgments between

Greece and Albania

Introduction. The recognition and enforcement of foreign judgments constitute an important subject of private international law. Their significance is particularly evident in family law disputes, such as divorce, child custody, and maintenance, in which the effectiveness of a judicial decision frequently depends on its recognition or enforcement in more than one legal system. In relations between Greece and Albania, a principal legal instrument is the Convention on Judicial Assistance in Civil and Criminal Matters, signed on 17 May 1993 and ratified by Law No. 2311/1995. The Convention establishes the conditions under which judgments delivered by the courts of one Contracting State may be recognised and enforced in the other. By virtue of the superior force accorded to international conventions that have been ratified and brought into force under Article 28(1) of the Greek Constitution, the relevant provisions of the Convention take precedence over the corresponding general provisions of the Greek Code of Civil Procedure (CCP). Against this background, the present analysis examines indicatively two decisions of the Thessaloniki Court of First Instance concerning the recognition in Greece of judgments delivered by Albanian courts dissolving marriages. The first decision also concerns an application for a declaration of enforceability in respect of a provision relating to child maintenance. The second highlights the importance of establishing the final and *irrevocable* character of a foreign divorce judgment and the need to supplement the evidence before a final determination can be made.

1. **Legal Framework of the Bilateral Convention.** The Greece–Albania Convention, ratified by Law No. 2311/1995, constitutes the special legal framework governing the recognition and enforcement of judgments. Articles 23 and 24 establish the substantive requirements for recognition and enforcement, while Articles 26 and 27 govern the procedure and related matters concerning the submission and examination of applications. Articles 323 and 905 CCP apply on a supplementary basis, insofar as they are not inconsistent with the Convention. Article 323 CCP sets out, inter alia, the conditions for recognising the res judicata effect of foreign judgments, whereas Article 905 CCP provides for the procedure by which foreign instruments may be declared enforceable in Greece.

1.1. Conditions for Recognition and Enforcement, Under Articles 23 and 24 of the Convention, recognition and enforcement are, in principle, subject to the following conditions:

1. The judgment has acquired the force of res judicata and is enforceable under the law of the state in which it was delivered.

1. The courts of the state in which recognition or enforcement is sought do not have exclusive international jurisdiction over the matter.

1. A party who did not participate in the proceedings or against whom judgment was entered in default was duly and timely served with the relevant process or was lawfully represented, where required.

1. The Convention excludes service by affixing the document to the door of the relevant premises (*affixation service*) as a sufficient method of service for the purposes of this examination.

1. There is no irreconcilable prior judgment between the same parties concerning the same subject matter and cause of action, nor any previously instituted pending action before the courts of the state in which recognition is sought, subject to the conditions laid down in the Convention.

1. Recognition or enforcement is not contrary to the public policy or fundamental principles of the legal order of the requested state.

Recognition additionally requires examination of the international jurisdiction of the court of origin in accordance with the applicable treaty and domestic legal framework. The foreign judgment may not be reviewed as to the substantive correctness of its determination. The examination concerns the legal requirements governing the circulation of the judgment across borders, rather than a retrial of the original dispute.

1.2. Required Documents and Procedure. Article 26(2) of the Convention provides that an application must be accompanied by the judgment or a certified copy thereof, together with a document certifying that the judgment has acquired the force of res judicata and is enforceable, unless these matters are apparent from the judgment itself. A certificate concerning service of process and the lawful representation of a party against whom judgment was entered in default

must also be submitted, where applicable, together with certified translations of the documents into a language accepted under the Convention. The production of an Apostille under the Hague Convention may serve to authenticate a public document where the relevant international convention applies. **It does not, however, establish, by itself, that a judgment has become final and irrevocable** or that all the requirements have been satisfied.

2. **Decision No. 3144/2026.** Decision No. 3144/2026 concerns an application by a Greek national seeking recognition in Greece of a judgment delivered by the Court of General Jurisdiction of Elbasan, Albania. The Albanian judgment dissolved the applicant's marriage, awarded custody of the minor child to his former wife, and regulated the father's right of contact with the child. In addition, the applicant sought a declaration of enforceability in respect of the provision which, according to the terms of his application, required him to pay monthly maintenance. The Albanian judgment had become final and irrevocable, as indicated by an endorsement appearing on the judgment itself.

2.1. Application of the Convention. The court held that the Convention ratified by Law No. 2311/1995 took precedence over the general provisions of the CCP. It examined whether the Albanian court possessed international jurisdiction, whether the parties' right to participate in the proceedings had been safeguarded, and whether any ground existed for refusing recognition on public policy grounds. With regard to international jurisdiction, the court took into account that the spouses' last common residence had been in the Municipality of Gramsh, Albania. It held that the matrimonial dispute fell within the jurisdiction of the Albanian court and that the joinder of the issues of custody and contact with the matrimonial dispute justified their examination by the same court. As regards the right to be heard, the court established that the former wife had been represented by a lawyer authorised to act on her behalf and that the applicant had participated in an earlier hearing at which an attempt at reconciliation had been made. He had been informed of the subsequent hearing date and had stated that he was unable to attend, requesting that the proceedings continue in his absence. Although the applicant was recorded as having been absent from the hearing, the court held that, in light of the specific circumstances, no additional certificate of service was required. This conclusion was based on his knowledge of the proceedings and the fact that he had had a genuine opportunity to participate.

2.2. The Enforcement of Maintenance Provision. The most significant issue arising from the decision concerns the application for a declaration of enforceability in respect of the maintenance provision. The court dismissed this part of the application as inadmissible for lack of standing. The reasoning was that the right to apply for a foreign instrument to be declared enforceable generally belongs to the person entitled to initiate enforcement proceedings, namely the creditor in respect of the relevant claim. In the present case, the applicant was the person liable to pay maintenance, rather than the person entitled to receive it. Accordingly, he could not himself seek to have the obligation to pay maintenance declared enforceable against him. The court's determination is correct insofar as it distinguishes between creditor and debtor for the purposes of standing. It should be clarified that dismissal of this particular claim does not mean that the maintenance provision was held to be invalid or legally ineffective. Rather, it means that the application was brought by a person who lacked standing to seek the particular procedural relief requested.

2.3. Assessment. Decision No. 3144/2026 correctly applies the fundamental principle that an applicable international convention takes precedence over the general rules of the CCP. It also highlights the importance of the party's genuine opportunity to participate in the foreign proceedings and the distinction between recognition of personal status and enforcement of a monetary claim. A particularly positive aspect of the Court's approach is its recognition that an application for recognition should not be dismissed solely on account of formal evidentiary deficiencies without first examining whether the relevant facts can be established through other reliable documents. Nevertheless, dispensing with the production of a certificate of service must be approached with caution. The Convention seeks to provide substantive protection for a party who did not participate in the proceedings. The decision promotes effective cross-border protection of family relationships while preserving procedural guarantees required for recognition of foreign judgments.

3; Decision No. 20256/2026. Thessaloniki First Instance Court

3.1. Subject Matter and Facts. Decision No. 20256/2026 concerns an application for recognition in Greece of a judgment delivered by the Court of the Judicial District of Durrës, Albania, dissolving the civil marriage between a Greek

national and his former wife, an Albanian national. The marriage had been celebrated in Durrës and registered both with the competent civil registry in Albania and with the Special Registry Office in Athens. According to an endorsement appearing on the judgment itself, the Albanian judgment had become final. The applicant submitted the judgment and documents establishing his participation in the proceedings through a lawyer authorised to represent him.

3.2. The Requirements for Recognition and Public Policy. The court reiterated that the bilateral Convention constituted the principal applicable legal framework, with Articles 323 and 905 CCP operating on a supplementary basis. It held that the Albanian court had international jurisdiction, given that the spouses' last common residence had been in Albania. It further found that the applicant had not been deprived of his right to defend his interests, since he had been represented by a lawyer authorised to act on his behalf, while his former wife had instituted the proceedings and participated in them. The court also found no conflict with Greek public policy and no irreconcilable Greek judgment concerning the same matter. These circumstances supported recognition. However, the court found that one crucial additional requirement had not been established: whether the judgment had attained the degree of procedural finality necessary for it to produce the legal effect of dissolving the marriage in Greece.

3.3. Significance of the Judgment's Final & Irrevocable Character. Under Article 1438 CC, Greek law requires a final and irrevocable judicial decision for a marriage to be dissolved. Accordingly, recognition of a foreign divorce judgment presupposes that the judgment has attained the corresponding degree of procedural finality under the applicable rules. In the present case, the endorsement submitted established that the judgment had become final on 27 December 2022, but did not necessarily establish that it had become irrevocable. No certificate or other sufficient evidence had been submitted to demonstrate that the Albanian judgment could no longer be challenged by an ordinary or extraordinary legal remedy, or that it had attained a degree of finality equivalent to that required under Greek law for the legal effects of divorce to arise; the court did not consider that this deficiency necessarily warranted the definitive dismissal of the application. Instead, it relied on Article 254 CCP, which also applies in non-contentious proceedings, and ordered that the hearing be resumed so that the necessary documents could be produced. In particular, the court required the submission of a certificate or legal information establishing the requisite degree

of procedural finality, or clarifying the relevant provisions of Albanian law. It also requested updated certificates confirming the absence of any related proceedings or judgment in Greece.

3.4. Assessment of the Decision. This decision is particularly significant because it demonstrates that *finality* and *irrevocability* are not necessarily synonymous legal concepts. The mere fact that no appeal has been lodged, or that the time limit for lodging one has expired, does not invariably establish that all available legal remedies have been exhausted or that the degree of finality has been attained. The court was therefore correct to refrain from recognising the foreign judgment immediately, without first clarifying this essential requirement. Equally sound was its decision to resume the hearing rather than dismiss the application. This approach serves procedural economy and permits evidentiary deficiencies to be remedied. It is also consistent with the approach commonly adopted by Greek courts, subject to relatively few exceptions.

4. **Comparative Assessment of the Decisions.** The two Albanian judgments share a common starting point, as both apply the Greece–Albania Convention as the special legal framework governing the recognition of foreign judgments in family law matters. In both cases, the court examines the international jurisdiction of the Albanian court, the participation of the parties, the absence of an inconsistent Greek judgment, and compatibility with public policy. The principal difference lies in the procedural treatment of the applications. Taken together, the decisions demonstrate that recognition of a foreign judgment is neither automatic nor dependent solely on the production of a certified copy. It requires a comprehensive examination of the applicable treaty and domestic-law requirements, with particular emphasis on international jurisdiction and the protection of the parties' procedural rights.

5.Conclusion. The bilateral agreement between Greece and Albania is the most active treaty among the rest in Greece. The decisions of the Thessaloniki Court of First Instance demonstrate the importance of the Greece–Albania Convention on Judicial Assistance for the effective cross-border protection of family relationships. The precedence of the Convention over the general rules of the Code od Civil Procedure contributes to a clearer framework for recognition and enforcement, while domestic provisions supplement that framework where permitted. The effective application of the Convention requires careful

examination of each individual case. Only in this way can foreign judgments be ensured of their appropriate legal effects in Greece and Albania without compromising the fundamental principles of either legal order.

For more information see my article: Recognition and Enforcement of Foreign Judgments in the Field of Bilateral Conventions of Greece with Balkan States, Balkan Yearbook of European and International Law 2021, pp. 206 et seq. https://www.academia.edu/67760009/Recognition_and_Enforcement_of_Foreign_Judgments_in_the_Field_of_Bilateral_Conventions_of_Greece_with_Balkan_States,.

An extensive analysis of the Treaty (in Greek) may be found in: https://www.sakkoulas.gr/en/editions/a-anthimos-allodapes-dikastikes-kai-diaititikes-apofaseis-2i-ekd-2024/.

Brazil's Superior Court Invokes *Forum Non Conveniens*: Is that Really What They Mean?

This post was written by Luana Matoso, the Head of the Centre of Expertise on Latin America at the Max Planck Institute for Comparative and International Private Law in Hamburg.

On September 1, 2026, Brazil's Superior Court of Justice invoked the doctrine of *forum non conveniens* in declining jurisdiction to hear a dispute. It is the first time this court has done so in a transnational case. Does the judgment represent the reception of *forum non conveniens* into Brazilian law? The answer is less straightforward than the terminology used by the court might suggest.

The Dispute

The claim was brought before a local court in São Paulo by a former Argentine

professional football player domiciled in Buenos Aires who sought damages for the allegedly unauthorized use of his image in the FIFA Soccer video-game series. The defendants were Electronic Arts Europe Ltd and Electronic Arts Nederland B.V., incorporated in the United Kingdom and the Netherlands, respectively.

The claimant relied on the fact that the games were sold in Brazil in order to establish jurisdiction under Art. 21(3) of the Brazilian Code of Civil Procedure (CCP), which provides for Brazilian jurisdiction where "the basis of the claim is a fact occurring or an act performed in Brazil." The first-instance court found it had no jurisdiction and dismissed the claim. The decision was upheld on appeal by the São Paulo Court of Appeals and, upon further appeal, by Brazil's Superior Court of Justice. Both courts invoked *forum non conveniens* in their decisions.

The approach of these courts to jurisdiction is highly relevant for transnational litigation practice in Brazil. São Paulo is Brazil's principal economic center, and its courts deal with a substantial volume of litigation involving foreign elements. The Superior Court of Justice, in turn, is Brazil's highest court for matters of federal law other than constitutional questions and is responsible for ensuring its uniform interpretation throughout the country. The Superior Court's endorsement of the approach taken in São Paulo could therefore represent a recognition of *forum non conveniens* not only in one of Brazil's most prominent centers for transnational disputes, but also as part of Brazilian law.

Forum Non Conveniens Without a Basis for Jurisdiction

The Superior Court's reasoning began with an approach familiar to the civil law tradition. It first advanced a purposive construction (teleological interpretation) of Article 21(3) of the CCP, identifying the "principles of proximity and state interest" as underlying the requirement of a factual connection with Brazil.

The court emphasized that the claimant was an Argentine citizen domiciled in Argentina who had never played professionally for a Brazilian team; that the defendants were companies incorporated abroad; and that the video games were actually sold by third-party retailers, who were not parties to the proceedings. It added that exercising jurisdiction in this case would unnecessarily burden the Brazilian judicial system, which would be contrary to the purpose of the connection requirement. In light of those circumstances, the court found no basis

for jurisdiction in the case.

Doctrinally speaking, this may have been sufficient to dismiss the claim. Yet the court immediately added: “Accordingly, the choice of the Brazilian forum must be regarded as abusive, given the absence of a substantial connection with Brazil, in light of the doctrine of *forum non conveniens*.”

The role of *forum non conveniens* is unclear here. Under the common law approach, *forum non conveniens* presupposes that a court *has* jurisdiction but decides not to *exercise* it. Having found that jurisdiction does not exist under Article 21(3) of the CCP, nor under any other basis, the court had no occasion to consider whether to decline to exercise jurisdiction. Nor did it explain the doctrine’s requirements, articulate a test, or identify an alternative forum better suited to hear the claim.

A Departure from Earlier Case Law?

The court also offered no explanation for invoking a doctrine that it had on previous occasions expressly refused to apply. In two prior judgments, the court had highlighted that the common law origins of *forum non conveniens* are difficult to reconcile with Brazil’s civil law tradition. In 2009, the court concluded that *forum non conveniens* “finds no support in Brazilian procedural rules”; in 2016, it stated that Brazilian law does not have a “positive rule capable of permitting this practice.”

In 2023, however, the court applied *forum non conveniens* in a dispute concerning the allocation of domestic competence. The case concerned child custody, involving a parent alleged to have committed a crime against the child. Although the judgment is not publicly available, the court’s official account states that it relied on *forum non conveniens* to refer the case to another judge better situated to hear it. The court recognized this as an “implicit exception” to the ordinary rules of domestic competence, applicable to cases where a competent court is not “adequate or convenient” for the hearing of the claim.

Now, the court has invoked *forum non conveniens* to decline jurisdiction in a transnational dispute, but without treating it as an exception to its jurisdictional rules.

Forum Non Conveniens as a Response to Forum Shopping

This case reveals a trend in the Brazilian approach to jurisdiction. Namely, Brazilian courts are increasingly seeking to curb forum shopping by invoking their reaffirmed or expanded powers to dismiss claims that do not engage local interests.

The reasoning of the Court of Appeals illustrates this point. It only briefly addresses the interpretation of Article 21(3) of the CCP, while focusing on the *motivations* of the claimant for bringing the claim in Brazil. Forum shopping is expressly identified as the court's main ground for dismissing the claim. The court states that the claimant sued in São Paulo for "purely strategic reasons, with the aim of obtaining a swift financial gain, given this Court's settled case law awarding moral damages against the respondents in favor of Brazilian athletes." The court even notes that the claimant's attorney was involved in several other similar cases, including in its ruling a link to an article in a local online newspaper in which the attorney is mentioned. Indeed, this type of claim has become remarkably popular among (Brazilian) football players. Today, there are thousands of disputes on this issue pending in Brazil (see e.g. the Superior Court's Tema Repetitivo No. 1.289).

This was also not the first time that the Court of Appeals of São Paulo invoked *forum non conveniens*. In fact, this court has repeatedly invoked the doctrine in recent years, particularly to dismiss claims in domestic disputes where local interests are not concerned. The application of *forum non conveniens* is generally justified with reference to forum shopping, with courts noting the parties' wish to benefit from the (perceived) greater efficiency of courts in São Paulo in relation to other local courts in Brazil.

The 2024 Amendment to the Brazilian CCP

This anti-forum shopping trend can also be seen in another development in the Brazilian law of jurisdiction, which I have also reported on here: the 2024 amendment to the Brazilian rules governing (domestic) choice of court agreements.

That amendment restricts the enforcement of choice of court agreements in cases

where the court selected by the parties has no connection to the dispute. The law now characterizes the act of bringing a claim before a court which has no connections to the dispute as “abusive” and gives courts the power to dismiss such claims on their own initiative.

Unsurprisingly, both the Superior and the Court of Appeals used the term “abusive” in the present case, which can be seen as a direct reference to the amended Article 63(5) of the CCP. In fact, the Court of Appeals expressly invoked this provision as an additional basis upon which the claim could be dismissed.

Forum Non Conveniens as a Rhetorical Tool

Taking all these considerations into account, what did the Brazilian Superior Court mean when it invoked *forum non conveniens*?

In this case, it can be concluded that *forum non conveniens* functioned principally as an oratorical reaction to (undesired) forum shopping. Its significance was more rhetorical than doctrinal. As has been shown, invoking *forum non conveniens* was doctrinally unnecessary once the court found no basis for jurisdiction. Yet the court wished to emphasize its own role in declining jurisdiction where contacts with the forum are insufficient. From this perspective, *forum non conveniens* provided the court with an argumentative framework in which public and local interests could stand at the forefront the courts’ reasoning rather than being disguised under certain methods of statutory interpretation.

In terms of a clear reception of *forum non conveniens* into Brazilian law, the decisive question remains whether the Superior Court will rely on the doctrine to decline jurisdiction in a case where a jurisdictional basis *does exist*. Until that day arrives, the Superior Court’s use of the term in this case–and its repeated use by regional courts–reflects a growing emphasis by Brazilian courts on their own powers to decline jurisdiction on the basis of public or local interests.

This post is cross-posted at Transnational Litigation Blog.

Recognition of a Kosovar Judgment in Greece

1. **Introduction.** Decision No. 21257/2026 of the Thessaloniki Court of First Instance is of particular interest in the fields of private international law and international civil procedure, as it concerns the recognition in the Greek legal order of a judgment of a foreign court dissolving a marriage, where the state in which that court operates is not officially recognised by Greece as an independent state. The issue assumes additional significance because the judgment originates from Kosovo, whose international legal status continues to be the subject of divergent positions within the international community.

The principal question is whether Greece's non-recognition of Kosovo automatically precludes recognition of the legal effects of a judicial decision rendered within its territory, or whether such effects may be recognised without prior diplomatic recognition of the entity concerned as a state.

The Court adopted the latter approach. It granted the application and recognised that the judgment of the Kosovo court dissolving the applicant's civil marriage had acquired the force of res judicata within Greek territory.

2. **Facts and Reasoning of the Court.** According to the facts of the case, the Greek applicant entered into a civil marriage with K. on 20 October 2020 before the civil registry authority in Kosovo. The marital relationship irretrievably broke down, and the marriage was dissolved by a judgment of a Kosovo court following divorce proceedings instituted by the husband against the applicant. The foreign judgment contained no statement of reasons because, according to the evidence accepted by the Greek Court, the parties had not requested that reasons be included and had waived their rights to appeal, pursuant to Article 161 of Kosovo's law governing dispute resolution proceedings. The Court therefore considered that the judgment had become final and irrevocable upon its publication.
3. **Recognition.** The starting point for a critical analysis is the fact that

Greece does not officially recognise Kosovo's independence. This position continues to be reflected in the policy of the Greek Ministry of Foreign Affairs, which maintains a reservation regarding Kosovo's status and supports dialogue between Belgrade and Pristina. Such non-recognition primarily concerns Kosovo's international legal and political status as an independent state. It does not, however, necessarily entail that every legal relationship, administrative act or judicial decision connected with that territory must be deprived of legal effect within the Greek legal order. Recognition of a state is a matter of public international law and foreign policy, whereas recognition of a foreign judicial decision is an institution of private international law and international civil procedure. Although the two issues may be factually connected, they are not legally identical.

More specifically, recognition of a state concerns acceptance of its international legal personality and its capacity to participate in international relations as a state. By contrast, recognition of a judicial decision concerns acceptance, within a different legal order, of the specific legal effects of an adjudication, subject to the requirements imposed by the law of the recognising state. Accordingly, accepting the dissolution of a marriage ordered by a Kosovo court does not, in itself, amount to recognition by Greece of Kosovo's statehood. The Greek court is not called upon to determine the question of Kosovo's independence, but rather to decide whether a particular judgment may produce legal effects in Greece.

4. **Autonomous Nature of the Recognition of Foreign Judgments.** This distinction is essential to understanding the decision. Recognition of a foreign decision does not necessarily constitute an act of political or diplomatic recognition; rather, it is a judicial determination as to whether the effects of that decision may be incorporated into the domestic legal order. In the present case, the subject matter of the application was neither recognition of Kosovo as a state nor general acceptance of its judicial system for every conceivable legal purpose. It was the recognition of a specific judgment dissolving the applicant's marriage. This approach serves legal certainty and the protection of the personal status of natural persons. If Kosovo's non-recognition automatically resulted in the refusal to recognise every judicial act issued there, a situation could arise in which a marriage was regarded as dissolved in Kosovo but continued to be regarded as subsisting in Greece. Such a discrepancy could give rise to

serious practical difficulties concerning remarriage, civil status and civil registration.

Furthermore, international cooperation practice itself acknowledges the need to process documents and acts originating in Kosovo, including in states that do not recognise its independence. By way of example, UNMIK provides document-certification services for use in United Nations Member States that do not recognise Kosovo, including documents relating to personal and family status. This practice does not, in itself, establish that every judicial decision originating in Kosovo is recognisable in Greece. It does, however, demonstrate that non-recognition of Kosovo's statehood does not necessarily preclude all institutional cooperation or acceptance of documents originating from the territory.

5. **The Significance of the Distinction for the Decision.** In this respect, the reasoning of the Thessaloniki Court is, in principle, persuasive. The Court did not proceed on the basis that Greece recognises Kosovo as an independent state. Instead, it treated the divorce judgment as a foreign judicial act whose legal effect had to be assessed independently. This approach avoids conflating a matter of international politics with an issue of private international law. At the same time, it does not mean that recognition of statehood is legally irrelevant in every circumstance. Non-recognition may give rise to specific difficulties concerning proof of the authenticity of documents, certification of the court's jurisdiction, and verification of the judgment's finality. These matters, however, must be examined on a case-specific basis rather than treated as grounds for automatically dismissing the application.
6. **The International Jurisdiction of the Kosovo Court.** The Greek Court considered a certificate issued by UNMIK and authenticated by the Greek consular office in Pristina, certifying the competence of the court that delivered the judgment. This evidence is particularly significant because Greece's non-recognition of Kosovo gives rise to practical difficulties in authenticating documents originating from its judicial authorities. Recourse to the UNMIK certification mechanism enables relevant matters to be verified without requiring prior diplomatic recognition of Kosovo. This practice is consistent with UNMIK's institutional role in certifying documents for use in states that do not recognise Kosovo's independence. Nevertheless, a distinction must be drawn between authentication of a

document and proof of the international jurisdiction of the court that issued it. The former concerns the document's authenticity and provenance, whereas the latter concerns the legal authority of the court to adjudicate the particular case.

7. **Public Policy.** Under Article 780 CCP, recognition must not be contrary to Greek public policy or good morals. In this context, public policy operates as a safeguard for the fundamental principles of the Greek legal order, rather than as a means of generally rejecting every foreign rule or institution that differs from Greek law. The Thessaloniki Court held that the dissolution of the marriage did not offend public policy because divorce by mutual consent is also recognised in Greece pursuant to Article 1441 CC. This conclusion is, in principle, correct. Greek public policy does not require refusal of recognition merely because a judgment was delivered by a court of a state that Greece does not recognise. The decisive consideration is whether the effects of the particular judgment are incompatible with the fundamental principles of the Greek legal order.
8. **Conclusion**

The decision highlights the importance of distinguishing between recognition of a state as a subject of international law, and recognition of the legal effects of a judicial decision delivered within its territory.

Greece's non-recognition of Kosovo does not, in itself, constitute sufficient grounds for excluding recognition of a divorce judgment delivered by a court in that territory. The issue must be determined independently, in accordance with the applicable rules of Greek private international law and international civil procedure.

Accordingly, the decision may be assessed positively insofar as it distinguishes between recognition of a state and recognition of a judicial decision, without implying that every aspect of its reasoning is equally persuasive. Its principal contribution lies in treating the recognition of a foreign decision as an autonomous legal issue, to be determined by reference to specific procedural safeguards and applicable legal requirements, rather than exclusively on the basis of Greece's diplomatic position towards the territory in which the decision was delivered.

The Philippines: Recognition of Foreign Divorces and Recent Amendments to the Rules of Court



This post is kindly prepared by Akifumi MOCHIZUKI, attorney at law at Atsumi Toshiyuki Law Office and a member of Private International Law Association of Japan

1. The Absence of Divorce under Philippine Law and the Recognition of Foreign Divorces in the Philippines

Philippine law provides for the declaration of nullity and the annulment of marriage, but generally it does not provide for divorce (except for Muslims, Code of Muslim Personal Laws□P.D. 1083). Accordingly, a divorce cannot be obtained under Philippine law, whether between two Filipino nationals or in a case in which Philippine law governs the divorce.

Where a Filipino national and a foreign national divorce abroad, the Filipino

spouse must petition a Philippine court for judicial recognition of the foreign divorce. Once the judgment granting recognition becomes final, the Filipino spouse acquires the legal capacity to remarry under Philippine law (Family Code of the Philippines, Art. 26(2)).

It was once argued that Art. 26(2) applies only where the foreign spouse was the petitioner in the divorce proceedings. The Supreme Court of the Philippines has since held that this is not required, so any foreign divorce suffices (*Republic v. Manalo*, G.R No. 2210129, April 24,2018). By contrast, a divorce obtained abroad by two Filipino nationals will not be recognized (*Republic v. Orbecido III*, G.R. No. 154380, May 10, 2005, *Garcia v. Recio*, G.R No. 128222, October 2, 2001(obiter dictum)). A divorce that is effected solely by agreement of the parties, without any decision by a court or public authority, such as a Japanese divorce by agreement (*kyōgi rikon*), is also eligible for recognition, as the Supreme Court held in *Racho v. Tanaka*, G.R. No. 199515, June 25, 2018.

2. Problems with the Previous Recognition Procedure in Cases Involving Japan

Filipinos, many of whom are women, who married Japanese nationals in Japan and subsequently divorced there have not always sought judicial recognition of their foreign divorces in the Philippines. The principal reasons include the high cost of legal representation and the length of the proceedings.

Under the previous procedure, counsel for the petitioner had to establish two matters before the Philippine court: (a) the fact of the foreign divorce and (b) its legal effect under the applicable foreign law, namely, that the divorce had the effect of conferring the legal capacity to remarry. Unlike in Japan, where the content of foreign law is generally ascertained by the court, Philippine proceedings require the party relying on foreign law to plead and prove its content.

As regards proof of the legal effect of a Japanese divorce, Japan’s Ministry of Justice provides English translations of Japanese legislation, including the Civil Code, through its Japanese Law Translation database. However, because these translations are not officially certified translations, they have often been regarded as insufficient evidence, and expert opinions may be required. Even after the

above-mentioned decision in *Racho v. Tanaka*, the author has encountered numerous cases in which petitions for recognition were denied for lack of sufficient evidence (*Republic v. Ng*, G.R. No. 249238, February 27, 2024).

Moreover, judicial recognition in the Philippines is not a prerequisite for remarriage in Japan. Suppose that a Japanese national habitually resident in Japan marries a Filipino national and that the couple subsequently divorce in Japan. Under the proviso to Article 27 of the Act on General Rules for Application of Laws (Act No. 78 of 2006), Japanese law governs the substantive requirements for divorce. As regards the form of the divorce, Article 34(1) and (2) of the same Act apply (the governing law is the law of Japan).

Where a divorce by agreement has been validly effected under Japanese law, the Filipino spouse may remarry **in Japan**, provided that the divorce and the resulting termination of the marriage are duly established for the purposes of Japanese law. The spouse need not obtain a certificate of legal capacity to contract marriage or a certificate of single status from the Philippine authorities.

Consequently, a Filipino national who has divorced in Japan may find himself or herself in a "limping" marital status: free to remarry in Japan but still regarded as married in the Philippines ("mariage boiteux").

3. Amendment of the Philippine Rules of Court

On October 7, 2026, the Supreme Court of the Philippines approved amendments to the Rules of Court intended to ease the evidentiary burden involved in obtaining judicial recognition of foreign divorces. The amendments were announced in the Court's press briefer dated October 8, 2026.

Under the amended rules, a petitioner seeking recognition of a foreign divorce under Article 26(2) of the Family Code must establish the fact of the foreign divorce. The rules introduce a disputable presumption that the divorce has the effect of conferring the legal capacity to remarry under the applicable foreign law, unless the divorce document indicates that the divorce has only limited effect. The party challenging recognition may rebut this presumption by proving that the divorce does not have the effect of permitting remarriage.

The amendments also introduce a presumption concerning the accuracy of an English translation of a foreign divorce document where the translator certifies its accuracy under oath, subject to rebuttal by contrary evidence.

By reducing the evidentiary burden on petitioners, the amendments represent a significant procedural development. They should facilitate access to judicial recognition of foreign divorces in the Philippines, particularly for Filipinos who have divorced abroad and face practical difficulties in proving foreign law.

For further details, see the Supreme Court of the Philippines' press briefer dated October 8, 2026.

Mozambican Supreme Court Recognises an Indian Adoption: A Teleological Approach to the Recognition of Foreign Acts



I. Introduction

Can a foreign adoption deed be given effect in Mozambique? What procedural steps must be followed, and which requirements must be satisfied? Does the fact that the adoption takes the form of a notarial deed complicate its "recognition" in Mozambique under the applicable legal framework for the "review and confirmation of foreign judgments"? These are some of the questions addressed by the Mozambican Supreme Court in a recent decision concerning the recognition of an Indian adoption in Mozambique. The case is particularly interesting and offers valuable insights from a comparative law perspective, thus warranting closer examination.

II. The Facts

The case concerns the review and confirmation in Mozambique of an Indian public deed of adoption executed by X, a Hindu Indian woman residing in Mozambique, and approved by the competent authorities in India, in respect of A, a Hindu Indian minor girl. X sought recognition of the Indian adoption to enable her husband, an American citizen also sharing residence with X, to proceed with a separate adoption of A in Mozambique, as the court hearing his application had required the prior recognition of the Indian adoption through the ordinary procedure provided for under Mozambican law. X therefore applied to the

Supreme Court for review and confirmation of the Indian adoption deed so that it could produce legal effects in Mozambique.

III. The Ruling (brief summary)

Having found that the relevant formalities had been complied with, the Court, in its ruling of 29 April 2026, recognised the Indian adoption. It first addressed whether a foreign public deed of adoption could qualify for recognition under Mozambican law. Although such a deed is not formally a judicial decision, the Court interpreted the concept of "decision" in Article 1094 of the Code of Civil Procedure (CPC) substantively, holding that a registered Indian adoption deed could qualify because of its legal effects, including the establishment of an irrevocable parent–child relationship.

The Court then examined whether the adoption satisfied the requirements for recognition under Article 1096 CPC, namely: (a) the absence of doubt as to the authenticity of the instrument and its proper interpretation; (b) its finality under Indian law; (c) the absence of fraud on the law in establishing the jurisdiction of the foreign authority; (d) the absence of conflicting pending or concluded proceedings in Mozambique, subject to the applicable rules on priority; (e) observance of procedural safeguards, including proper service, the right to be heard and equality of the parties; (f) compatibility with Mozambican international public policy; and (g) compliance with the applicable nationality privilege.

Examining each requirement in turn and addressing the legal issues arising in the context of the Indian adoption, the Court concluded that all the conditions for recognition had been satisfied. It therefore granted the application, allowing the Indian adoption deed to produce legal effects in Mozambique.

IV. Comments

1. General Remarks on the Court's Approach

The case commented on here is, in many respects, particularly interesting and

offers several useful insights. The Supreme Court's discussion of the recognition requirements is detailed and well-reasoned. Indeed, as is common in the Court's practice, it begins its analysis of each issue by setting out the relevant theoretical considerations and the general position under Mozambican law before turning to the specific circumstances of the case. This approach helps explain why the judgment is comparatively lengthy. The decision also illustrates the Court's receptiveness to Portuguese legal scholarship and case law, which it draws on in addressing certain issues. As the Court explains, "Portugal has a closely related legal system and is frequently used as a doctrinal and comparative reference in Mozambique".

It is also noteworthy that the Court explicitly acknowledged the importance of a "systematic and teleological interpretation", observing that the wording of the law does not preclude such an interpretation. This is significant insofar as it allows the Court to emphasise the practical effectiveness of the recognition mechanism, its conformity with the principles of legal certainty and the protection of legitimate expectations and, more importantly, the best interests of the child, particularly where the establishment of family ties is at issue.

Against this background, two issues – among many others – deserve particular attention for the purpose of a concise blog comment. The first concerns the procedural complications arising from the absence of automatic recognition in Mozambican law. The second, and in my view the main contribution of the decision, concerns the extension of Mozambique's regime for the recognition and enforcement of foreign decisions to foreign public notarial deeds and the potential implications of the Court's reasoning for other non-judicial acts. The case also raises broader questions about the role of the HCCH conventions in facilitating the cross-border circulation of documents and addressing the challenges associated with intercountry adoption.

2. The Procedural Complications Arising from the Absence of Automatic Recognition

The first issue is the unnecessary complication of the recognition procedure resulting from the absence of the principle of automatic recognition in Mozambican law (for an overview, see my previous comments on this blog here).

As the factual background shows, X's application for recognition of the Indian adoption became necessary when her husband sought to adopt A himself. However, for his application to proceed, the Indian adoption first had to be formally recognised in Mozambique. Under Mozambican law, foreign judgments cannot produce legal effects until they have been reviewed and confirmed by the Supreme Court through the applicable recognition and enforcement procedure (for an overview, see see my previous comments here). Consequently, the proceedings concerning the husband's adoption application were stayed, and the parties were required to obtain recognition of the Indian adoption first.

While these procedural steps follow from the existing framework, which does not provide for automatic recognition, this case clearly illustrates the need to consider introducing such a principle into Mozambican law. Had automatic recognition been available, the judge hearing the husband's adoption application could have examined, as an incidental matter, whether the Indian adoption satisfied the requirements for recognition under Mozambican law and, if so, proceeded with the application without requiring the parties to initiate separate proceedings before the Supreme Court. This would have avoided an unnecessary procedural detour and facilitated the effective resolution of the adoption application.

3. The Recognition of Foreign Public Notarial Deeds: A Potential Extension to Non-Judicial Acts

The second issue, which in my view constitutes the main contribution of the decision, concerns the extension of Mozambique's regime for the recognition and enforcement of foreign decisions to foreign public notarial deeds, and the position adopted by the Court in this regard.

It is noteworthy that the Court approached this question as a preliminary issue, examining whether the foreign adoption deed was eligible for recognition and enforcement under the applicable legal framework. The Court acknowledged that the term "decision" generally refers to judicial decisions concerning private rights rendered by a foreign court. It nevertheless considered that the wording of the law did not preclude a systematic and teleological interpretation encompassing other instruments which, although not "decisions" in the strict legal sense,

produce equivalent legal effects. In particular, the Court focused on whether such instruments definitively determine subjective legal positions in civil or commercial matters and possess a settled and enduring effect.

Applying this reasoning to the Indian adoption, the Court acknowledged that the adoption deed was not a judicial decision as such but considered that it shared its essential characteristics, notably the stability of the legal status it established between parent and child. The Court also addressed the concern that such an interpretation might unduly broaden the scope of the applicable legal framework. Its answer was straightforward: the interpretation did not extend the regime to instruments that were merely contractual or administrative in nature and lacked a settled effect or the capacity to determine personal status definitively. On the basis of this teleological and functional interpretation, the Court concluded that the Indian adoption deed was eligible for review and confirmation under the applicable legal framework, subject to the adjustments required by the specific nature of an adoption instrument that is not a judicial decision *per se*.

The Court's approach is significant because it opens the door to the recognition of other foreign non-judicial acts, notably non-judicial divorces available in several European countries (on this issue, see my previous post here on this blog). The key question in such cases would be whether the foreign act shares with a judicial decision the relevant characteristics identified by the Court, particularly the definitive determination of a legal status and the stability of the legal effects produced. If these elements are present, the Court's reasoning could provide a basis for considering such acts eligible for recognition under Mozambique's existing legal framework.

4. Authentication, Intercountry Adoption and the Relevance of the HCCH Conventions

The case raises two distinct questions concerning the relevance of the HCCH conventions: the authentication of foreign public documents (the 1961 HCCH Apostille Convention) and the international context of intercountry adoption (the HCCH 1993 Adoption Convention). The first relates directly to the Court's reasoning, while the second offers a broader perspective on the cross-border movement of adopted children.

a) Authentication Requirements and the 1961 Apostille Convention

One of the issues raised in the case concerns compliance with the requirements of authenticity and intelligibility under Article 1096(a) CPC. The factual background provides useful insights into this issue. After X applied for recognition of the Indian adoption, she was invited to submit an authenticated and legalised copy of the adoption deed, together with any relevant explanations she considered necessary. In response, X submitted a legal opinion explaining that the adoption complied with Indian law, particularly the Hindu Adoptions and Maintenance Act (HAMA) of 1956, and filed the notarial instrument of adoption together with its translation.

The Deputy Attorney General, however, considered that X needed to take the necessary steps to obtain the signature of a Mozambican consular or diplomatic officer in India to ensure that the legalisation of the adoption deed complied with the formalities required under Mozambican law (Article 540 CPC). In addressing this issue, the Court first referred to Portuguese legal opinions according to which legalisation is no longer required, except where doubts arise as to the authenticity of the foreign document itself or that of its authentication. The Court then observed that the documents had been issued by the Indian authorities, bore the Indian government emblem and appropriate seals, and contained the signatures and fingerprints of the parties, as well as the signatures of the relevant Indian officials. It therefore found no reason to doubt the authenticity of the adoption instrument.

Accordingly, the Court held that, in the circumstances, it was unnecessary to legalise the document by obtaining, through the Mozambican Consulate in India, authentication of the signature of the official of the Registry Office who had approved the public deed of adoption. Such a step would otherwise have been required under a strict application of Article 540 CPC.

One cannot help wondering whether these doubts and procedural complications could have been avoided had Mozambique been a Contracting State to the 1961 Apostille Convention (on the need for African countries to join the Apostille Convention, with reference to Mozambican case law, see my previous comment on this blog here). Since India is also a Contracting State since 2004, an apostille

could, where the Convention applies, have facilitated the circulation of the relevant document between the two countries. The Court could then have verified the presence and validity of the apostille rather than having to examine the need for additional consular or diplomatic authentication.

b) The 1993 Adoption Convention and the Cross-Border Movement of Adopted Children

The case also invites reflection on the 1993 HCCH Adoption Convention, to which India is a Contracting State since 2003. Discussions of intercountry adoption often focus on children moving from countries in the Global South, as "States of origin" to adoptive parents in the Global North as "receiving States". The present case illustrates a different configuration: an Indian mother residing in Mozambique adopted a child in India, and the child was subsequently brought to live with her in Mozambique. It thus highlights the potential relevance of the Convention beyond the more familiar North–South context, particularly in facilitating cooperation between countries of the Global South. Had Mozambique also been a Contracting State, the Convention could potentially have provided a framework for cooperation between the two countries, subject to its conditions of application. This case therefore serves as a reminder that the HCCH conventions can contribute not only to cooperation between countries of the Global North and South, but also to strengthening legal cooperation among countries of the Global South. The 1993 Adoption Convention has already attracted significant participation in Africa, with 24 African States having joined it. This makes it one of the most widely adopted HCCH conventions on the continent.

Egyptian Supreme Court Enforces Italian Judgment: The Right

Outcome despite Some Reservations



I. Introduction

The enforcement of foreign judgments depends on the legal regime applicable to the case. In common law jurisdictions, enforcement may proceed, depending on the circumstances, either by registration under a statutory regime (whether based on reciprocal arrangements or international conventions) or by an action on the foreign judgment at common law. In civil law jurisdictions, enforcement generally requires exequatur proceedings, which may be governed by domestic law or, where applicable, by an international convention. Where an international convention applies, its provisions should, in principle, govern the enforcement process, unless the convention itself provides otherwise or leaves a particular matter to be governed by domestic law.

Although this outline may appear self-evident, judicial practice in many countries, particularly in the MENA region, suggests otherwise. Even where an applicable international convention exists, courts may either disregard it altogether or begin their analysis under domestic law, referring to the convention only as a subsidiary or residual basis. This state of affairs is illustrated by a recent decision of the Egyptian Court of Cassation concerning the enforcement in Egypt of an Italian

judgment. Given the significance of this decision, it warrants closer examination, particularly with regard to the relationship between the applicable international convention and the domestic rules governing the recognition and enforcement of foreign judgments.

II. The Facts

The case concerns an application for the recognition and enforcement of an Italian judgment brought by X (appellant and original claimant, an individual employee) against Y (appellee and original defendant, an Egyptian press institution based in Cairo).

The decision provides limited factual background. It indicates that X sought recognition and enforcement in Egypt of an Italian labour judgment recognising an employment relationship between the parties and ordering Y to pay X salary arrears, together with an inflation adjustment calculated according to the Italian National Institute of Statistics and statutory interest. The Egyptian Court of First Instance granted enforcement, but the Court of Appeal overturned that decision and dismissed the application. The Court of Appeal considered that Y had no place of residence (*maḥal ʾiqāmah*—محل إقامة) in Italy when the proceedings were commenced. It also considered that the Italian judgment addressed X's work as a journalist-correspondent without examining the nature of Y's office (*maqarr*—مقر) in Italy or the applicability of the conditions laid down in the bilateral treaty between Egypt and Italy on the recognition of judicial decisions.

X subsequently appealed to the Court of Cassation, arguing that the Italian judgment satisfied the requirements for the enforcement of foreign judgments under Articles 296–298 of the Egyptian Code of Civil and Commercial Procedure (Law No. 13 of 1968 – hereafter CCCP). In particular, X argued that: (1) the Italian court had jurisdiction because the employment relationship was performed entirely in Italy in accordance with the employment contract; (2) Y had been duly served and had participated in the Italian proceedings by submitting a defence memorandum and presenting its claims; (3) the Italian judgment had become final and res judicata, as evidenced by official certificates issued by the Italian judicial authorities and duly authenticated; and (4) the judgment did not violate Egyptian public policy or public morals. X also challenged the Court of Appeal's finding that

Y had no office (*maqarr*—مقر) in Italy when the proceedings were commenced. He maintained that Y had a known office (*maqarr*—مقر) in Rome, used for collecting news and distributing the newspaper, and that official documents submitted to the lower courts established that Y had been duly served at that address.

> *(□) It should be noted that maqarr (مقر) in Arabic means "domicile". However, I believe that the reference here is to Y's office in Italy, rather than to its "domicile" in the technical sense.*

III. The Ruling

In its ruling of *11 February 2026*, the Court of Cassation upheld X's arguments and quashed the appealed decision. In doing so, the Court reasoned as follows.

The Court began, as it usually does, by setting out the general legal framework.

First, it recalled that, according to its established case law, where treaties govern the recognition and enforcement of foreign judgments between Egypt and another State, their provisions must be applied (Article 301 of the CCCP). It further noted that, under Article 298(1) of the CCCP, the foreign court that rendered the judgment must have had jurisdiction. This requirement concerns the foreign court's international jurisdiction, rather than its jurisdiction under the domestic rules of the State of origin, whether relating to subject matter or territorial jurisdiction. The Court then explained that, when assessing the foreign court's indirect jurisdiction under Article 298(1), it must be determined whether Egyptian courts lack jurisdiction over the dispute in respect of which the foreign judgment was rendered. In the Court's view, this requirement concerns whether Egyptian courts have exclusive jurisdiction over the dispute. Where their jurisdiction is merely concurrent with that of the foreign court, this does not preclude enforcement, provided that the foreign judgment does not conflict with a judgment or order previously rendered by the Egyptian courts.

The Court next addressed the principle of reciprocity under Article 296 of the CCCP, according to which foreign judgments may be enforced in Egypt on the basis of reciprocity with the State of origin. It explained that the reciprocity required by the legislature is legislative, rather than diplomatic, reciprocity

established through a treaty. Egyptian courts must therefore examine, of their own motion (*sua sponte*), whether legislative reciprocity exists.

The Court then referred to the bilateral convention between Egypt and Italy on the recognition and enforcement of judgments in civil, commercial and personal status matters. It noted that, under the Convention, the courts of the State in which enforcement is sought must, when examining the jurisdictional basis of the judgment, be bound by the findings of fact contained in it, unless the judgment was rendered in default. The Court also referred to Article 4(3) of the Convention, under which the court of the State of origin is considered to have jurisdiction where the contractual obligation forming the subject matter of the dispute was performed, and was due to be performed, in that State pursuant to an express or implied agreement between the claimant and the defendant.

Having clarified the applicable legal framework, the Court proceeded to apply it to the case at hand.

It found that the Italian court had jurisdiction, that its judgment had acquired the force of res judicata, that it did not violate Egyptian public policy or public morals, that it did not conflict with any judgment or order previously rendered by the Egyptian courts, and that the respondent institution had been duly represented in the proceedings. Accordingly, the Court concluded that the Italian judgment satisfied the conditions for enforcement in Egypt under the bilateral Convention, as required by Article 296 of the CCCP.

IV. Comments

While one can agree with the outcome of the decision, parts of the Court's reasoning raise questions, if not doubts. This concerns, in particular, the detour through domestic law, notably Articles 296 and 298 of the CCCP, which set out the requirements for the enforcement of foreign judgments in Egypt.

In my view, the Court correctly began by citing Article 301 of the CCCP, which provides that where treaties govern the recognition and enforcement of foreign judgments between Egypt and another State, their provisions must be applied. From that point, the Court should have taken note of the bilateral Convention between Egypt and Italy and examined the enforceability of the Italian judgment

by applying the provisions of that Convention. Accordingly, the references to the rules of domestic law governing the indirect jurisdiction of the foreign court under Article 298(1) and the principle of reciprocity under Article 296 appear unnecessary.

It should be noted, however, that the Court of Cassation's established practice frequently follows the same approach as in the present case: it refers to provisions of domestic law, either exclusively or in combination with the applicable international convention, in a manner that is, at the very least, difficult to reconcile with Article 301 of the CCCP.

That said, a few further comments deserve to be made.

First, in examining the question of indirect jurisdiction, the Court essentially reiterated its established position on this matter. The case therefore provides yet another example of how, under Article 298(1) of the CCCP, the indirect jurisdiction of the foreign court is subject to a twofold test or a double control:

1. First, the jurisdiction of the foreign court must be examined in light of its own rules of international jurisdiction. In this respect, Egyptian courts should not investigate whether the foreign court that rendered the judgment had jurisdiction under its own domestic rules governing subject-matter and territorial jurisdiction.
2. Second, Egyptian courts must consider whether the dispute falls within their own jurisdiction. It is well established that this inquiry concerns only whether Egyptian courts have exclusive jurisdiction over the dispute, and does not extend to cases in which their jurisdiction is merely concurrent with that of the foreign court.

In this respect, it is worth noting that, with a few exceptions, Egyptian law does not clearly specify the circumstances in which Egyptian courts have exclusive jurisdiction. This question is particularly relevant in employment disputes, in which a new law has recently been adopted that appears to give certain labour law provisions a mandatory character, raising the question of whether they should be treated as *lois de police* (overriding mandatory rules). The present case, however, suggests that even the mandatory nature of such provisions does not, in itself, confer exclusive jurisdiction on Egyptian courts.

It is also noteworthy that, although the case concerned an employment contract,

the Court treated it as an ordinary contractual dispute and applied the general rules governing contractual obligations. This approach contrasts with the broader development in comparative law, which has increasingly recognised the need for special protective rules to safeguard employees as the weaker party to the employment relationship. From a private international law perspective, Egyptian law still lacks such protective rules, both in relation to international jurisdiction and in the field of choice of law.

The second question concerns reciprocity. The Court recalled its general position on this issue, notably by explaining that the reciprocity required under Article 296 is legislative, rather than diplomatic, reciprocity, in the sense that it does not require the existence of a treaty between the State of origin and Egypt. Recent decisions, as reported on this blog (here and here), however, show that, despite reaffirming this well-established distinction, the Court has concluded that reciprocity was lacking after noting the absence of an applicable treaty. The Court's position in the present case is somewhat nuanced. Although it confirmed the long-established distinction between legislative and diplomatic reciprocity, it immediately referred to the bilateral Convention between Egypt and Italy, before concluding that the Italian judgment satisfied the conditions for enforcement in Egypt under that Convention, as required by Article 296 of the CCCP. This reference to Article 296 is problematic, as that provision concerns reciprocity, whereas the application of international conventions is addressed by Article 301. It is unclear whether the Court's reference was a mistake. In any event, it would have been more appropriate to rely on Article 301 as requiring the application of the Egyptian–Italian Convention in preference to domestic law.

(□) Previous Posts on Egyptian PIL:

- Zamzam on Egyptian Private International Law (in Arabic): Towards Reviving the Golden Age of Egyptian Private International Law
- Refusal to Enforce in Egypt of a Californian (U.S.) Judgment for Lack of Reciprocity: What Has Gotten into the Egyptian Supreme Court?
- Reciprocity and the Enforcement of Foreign Judgments in Egypt – A Critical Assessment of a Recent Supreme Court Decision
- Enforcing Foreign Judgments in Egypt: A Critical Examination of Two Recent Egyptian Supreme Court Cases

- Egyptian Supreme Court on the Enforcement of Foreign Judgments – Special Focus on the Service Requirement
- Egyptian Court of Cassation on the application of the Hague Service Convention