

An Analytical Study of the Requirements for Recognition and Enforcement of Foreign Judgments in Egypt

دراسة تحليلية لشروط الاعتراف بالأحكام الأجنبية وتنفيذها في مصر

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Abstract

The requirements for the recognition and enforcement of foreign judgments in Egypt are laid down in Articles 296 and 298 of the Civil and Commercial Procedure Code. Among these provisions, Article 298(1) has emerged as the most controversial due to its jurisdictional condition. According to the first part of this Article, a foreign judgment may not be recognized or enforced in Egypt if Egyptian courts have jurisdiction over the dispute in respect of which the foreign judgment was issued, regardless of whether that jurisdiction is exclusive or non-exclusive. This condition, when applied without restriction, significantly limits the number of foreign judgments that can be enforced in Egypt, thereby raising concerns regarding legal certainty and international judicial cooperation. The study aims to clarify the scope and interpretation of this jurisdictional requirement, while also examining the other requirements for recognition and enforcement under Egyptian law. Drawing on Egyptian legal doctrine and case law, the paper argues that the jurisdictional restriction in Article 298(1) should be interpreted narrowly, applying only in cases where Egyptian courts have exclusive jurisdiction over the dispute. Such an interpretation would align with comparative legal standards and support a more balanced approach to cross-border judgment enforcement in Egypt.

Keywords:

Exclusive Jurisdiction, Enforcement Order, Inconsistent Judgments, International Jurisdiction, Judged Matter, Public Policy, Reciprocity

المستخلص

ينص قانون المرافعات المدنية والتجارية. في المادتين 296 و298، على الشروط المنظمة للاعتراف بالأحكام الأجنبية وتنفيذها في مصر. من بين هذه الشروط. برز الشرط الوارد في الفقرة الأولى من المادة 298 كأكثر الشروط خضوعاً للتأويل والخلاف الفقهي. وفقاً لهذا الشرط. لا يجوز الاعتراف بالحكم الأجنبي أو تنفيذه في مصر إذا كانت المحاكم المصرية مختصة بالنزاع الذي صدر بشأنه الحكم الأجنبي. سواء أكان هذا الاختصاص حصرياً أم غير حصري. ويشكّل هذا الشرط. إذا طُبّق بلا ضوابط. عائقاً أمام تنفيذ طيف واسع من الأحكام الأجنبية في مصر. مما يثير تساؤلات حول متطلبات الأمان القانوني وأسس التعاون القضائي الدولي. تهدف هذه الدراسة إلى توضيح نطاق تطبيق هذا الشرط وتفسيره. إلى جانب تحليل الشروط الأخرى للاعتراف وتنفيذ الأحكام الأجنبية وفقاً للقانون المصري. استناداً إلى الفقه القانوني المصري وأحكام القضاء. تؤكد الدراسة أنه ينبغي تفسير شرط الاختصاص المنصوص عليه في الفقرة الأولى من المادة 298 تفسيراً ضيقاً. بحيث يُطبق فقط في الحالات التي تتمتع فيها المحاكم المصرية باختصاص حصري لنظر النزاع. إن اعتماد هذا التفسير من شأنه أن ينسجم مع المعايير القانونية المقارنة. وأن يساهم في تبني نهج أكثر توازناً في التعامل مع تنفيذ الأحكام الأجنبية في مصر.

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1. INTRODUCTION

The primary objective of any dispute resolution process is to enforce the resulting judgment because, without enforcement, the entire procedure has no practical value for the involved parties. The study aims to examine the requirements for the recognition and enforcement of foreign judgments in Egypt. The provisions on the recognition and enforcement of foreign judgments are laid down in the 1968 Civil and Commercial Procedure Code (Law No 13 of 7 May 1968, *Qanun al-Murafaat al-Madaniyah wa l-Tijariah*, henceforth CCPC). Article 296 CCPC confirms the reciprocity as a requirement for enforcing foreign judgments. Under this Article, judgments and orders issued in a foreign country can be enforced in Egypt according to the same requirements laid down in the law of the country of origin for the enforcement of Egyptian judgments and orders. Article 297 CCPC determines the competent court for issuing the enforcement order of a foreign judgment. According to this Article, the enforcement application shall be filed with the court of first instance in the district where enforcement is to take place, in accordance with the standard rules for initiating legal proceedings. In addition to the reciprocity requirement, Article 298 CCPC enumerates four other requirements for the recognition and enforcement of foreign judgments.¹ It stipulates that:

An enforcement order must not be issued unless the following are established: 1. the Egyptian courts do not have jurisdiction to decide the dispute in respect of which the judgment or the order was rendered, and the foreign rendering courts have jurisdiction under the international jurisdiction rules stated in their law; 2. the parties to the dispute in respect of which the judgment was rendered were obliged to attend and properly represented in the proceedings; 3. the judgment or order has the force of judged matter according to the law of the rendering court; 4. the judgment or order must not be irreconcilable with an earlier Egyptian judgment and its content must not violate the public policy or morals in Egypt.²

It should be noted that according to Article 301 CCPC,³ the previous Articles are only applied when there is no judicial cooperation agreement between Egypt and the country of origin regarding the recognition and enforcement of foreign judgments.⁴ The Court of Cassation has held that,

1 It is worth noting that under Articles 296 and 298 CCPC, the Egyptian legislator has established that foreign judicial orders should be treated equally with foreign judgments. This means that enforcing foreign orders is permissible in Egypt, just as enforcing judgments is. Judicial orders are decisions made by a judge at the request of one of the disputing parties. These orders are not meant to decide the merits of a dispute, but rather to grant permission for a specific action, such as allowing a guardian to act on behalf of a minor. Additionally, appointment acts, like appointing an expert or guardian, or removing them, are also considered judicial orders. Moreover, acts of proof, such as proving acknowledgment, reconciliation, or announcing a death, are considered judicial orders as well. See Salamah, A. (2000). *The Doctrine of International Civil Procedures*. Cairo: Dar al-Nahdah al-Arabiyyah, pp. 583-584

2 The translation of this Article, as well as all other Articles used in this study, is an unofficial translation by the author.

3 Article 301 CCPC provides that: 'Applying the rules stipulated in the previous Articles does not prejudice the provisions of treaties concluded or to be concluded between the Republic of Egypt and other countries in this regard'.

4 Although Articles 296-298 only refer to the enforcement and do not refer to the recognition, the Egyptian Court of Cassation has emphasized that it is important to differentiate between the enforcement of a foreign judgment and the recognition of its effects. The court clarified that an *exequatur* is required for the enforcement of a foreign judgment. In contrast, an *exequatur* is not necessary for recognizing the effects of a foreign judgment; it is sufficient for the judgment to meet the conditions specified in Article 298 CCPC. Case No. 2950, 12 March 2012, the Court of Cassation. See El Chazli, K. (2014). *Recognition and Enforcement of Foreign Decisions in Egypt*. *Yearbook of Private International Law*, 15, 389-408, p. 408.

according to Article 301 CCPC, treaties must be applied even if they conflict with the provisions set forth by the CCPC.⁵ Regarding recognizing and enforcing foreign judgments, Egypt has concluded many judicial cooperation agreements with other countries. The 1983 'Riyadh Arab Agreement for Judicial Cooperation', for example, is a multilateral Agreement to which Egypt is a party.⁶ It provides for reciprocal recognition among Arab League member states. The convention is not limited to the enforcement of foreign judgments, but it regulates various matters of judicial cooperation as service of judicial and extrajudicial documents, taking of evidence, extradition, exchange of information, and access to justice. Egypt has also concluded many bilateral judicial cooperation agreements with other countries, which organize, among various issues, the issue of recognition and enforcement of foreign judgments.⁷ It should be noted that Egypt is a member state of the Hague Conference on Private International Law (HCCH) and has acceded to several international conventions adopted by the HCCH.⁸ However, Egypt has not yet acceded to the 2019 'Judgment Convention'.⁹

When there is no judicial cooperation agreement between Egypt and the country of origin, the recognition and enforcement of foreign judgments would be subject to the requirements laid down in Articles 296-298 CCPC. Therefore, the paper mainly focuses on examining and discussing all these requirements. The paper proceeds as follows: Part II discusses the reciprocity requirement. Part III examines the jurisdictional requirements. Part IV investigates the *res judicata* effect of the foreign judgment and the absence of an inconsistent Egyptian judgment. Part V discusses the requirement of compatibility with public policy, and Part VI concludes the discussion and makes recommendations.

5 Decision No. 19276, 23 December 2019, the Court of Cassation. Available online (in Arabic) at: <https://allied-forlegalandtaxadvice.com/%D8%AA%D8%B0%D9%8A%D9%8A%D9%84-%D8%A7%D9%84%D8%AD%D9%83%D9%85> (last visited May 11, 2025).

6 The Riyadh Agreement entered into force for Egypt on 8 October 2014. Available online (in Arabic) at: <https://manshurat.org/node/3842> (last visited May 10, 2025).

7 See, for example: 1. Articles 18-23 of the 1987 '*Judicial Cooperation Agreement between the Arab Republic of Egypt and the Hashemite Kingdom of Jordan*'. Available online (in Arabic) at: <https://manshurat.org/node/42706> (last visited May 10, 2025); 2. Articles 28-35 of the 1989 '*Judicial Cooperation Agreement in Civil Matters between the Arab Republic of Egypt and the Kingdom of Morocco*'. Available online (in Arabic) at: <https://manshurat.org/node/42372> (last visited May 10, 2025); 3. Articles 21-29 of the 1969 '*Judicial Cooperation Agreement in Civil and Personal Status Matters between the Arab Republic of Egypt and the Federal Republic of Germany*'. Available online (in Arabic) at: <https://manshurat.org/node/51515> (last visited May 10, 2025).

8 Egypt joined the HCCH on 24 April 1961. Currently, Egypt is only a contracting party to the following HCCH Conventions: 1. Convention of 1 March 1954 on Civil Procedure; 2. Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; 3. Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations. See <https://www.hcch.net/en/states/hcch-members/details1/?sid=33> (last visited May 15, 2025).

9 The 2019 'Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters'. The convention was adopted on 2 July 2019 and entered into force on 19 September 2023. It currently has 33 contracting parties, including the European Union. See <https://www.hcch.net/en/instruments/conventions/status-table/?cid=137> (last visited May 5, 2025).

2. RECIPROCITY

The enforcement of foreign judgments in Egypt necessitates the establishment of reciprocity between Egypt and the country of origin. Some Egyptian authors criticize the reciprocity requirement, arguing that linking the protection of private rights to the reciprocity concept may lead to insecurity and instability in private international relationships.¹⁰ However, the legislator explicitly confirms the reciprocity requirement in Article 296 CCPC and provides that:

Judgments and orders issued in a foreign country might be enforced in Egypt according to the same requirements laid down in the law of that country for the enforcement of Egyptian judgments and orders.

According to this Article, the foreign judgment cannot be enforced in Egypt unless the country of origin enforces the Egyptian judgments. Reciprocity can be explicitly established through a judicial cooperation agreement or implicitly through the practical enforcement of Egyptian judgments in the country of origin. The Egyptian Court of Cassation has affirmed that diplomatic exchange is not a prerequisite for the enforcement of foreign judgments in Egypt. In other words, the existence of an international cooperation agreement between Egypt and the country of origin is not required. Instead, it is sufficient for the Egyptian court to verify that the country of origin permits the enforcement of Egyptian judgments under similar conditions.¹¹ Some Egyptian authors have also affirmed that the practical enforcement of Egyptian judgments in the country of origin is sufficient to fulfill the reciprocity requirement.¹² Therefore, the Egyptian judge shall consider the practical situation and should not enforce the foreign judgment unless the foreign country actually and practically enforces Egyptian judgments. Consequently, the mere existence of international judicial cooperation agreements is insufficient to establish reciprocity.¹³

It should be noted that Article 296 CCPC obliges Egyptian courts to treat foreign judgments in the same manner that courts in the country of origin treat Egyptian judgments.¹⁴ For instance, if the foreign issuing court treats Egyptian judgments only as evidence that can be rebutted, then Egyptian courts shall also consider foreign judgments as evidence that can be rebutted and require the judgment creditor to file a new lawsuit before the Egyptian court instead of filing an enforcement lawsuit.¹⁵ Accordingly, the Egyptian court will adjudicate the

10 Haddad, H. (2010). *The General Theory of Private International Judicial Law* (Vol. 2). Beirut: Manshurat-u I-Halabi al-Hoqqiyah, pp. 327; Salamah, *supra* note 1, p. 636.

11 Decision No. 1136, 28 November 1990, the Court of Cassation. See Badr, Y. I. (2021). *The Hague 2019 Convention for the Recognition and Enforcement of Foreign Judicial Decisions: A Comparative Study*. *International Journal of Doctrine, Judiciary, and Legislation*, 2(2), 433.

12 Khalid, H. (2006). *The Private International Judicial Law*. Alexandria: Munshaat-u I-Maarif, p. 483.

13 Salamah, *supra* note 1, p. 638.

14 Khodabakhshi, A., Kabry, M. M., & Ansari, A. (n.d.). Requirements for enforcement of foreign judgements in Iranian and Egyptian law. *Journal of Private Law*, 15(2), 357, (in Persian).

15 In this situation, the Egyptian court shall have jurisdiction to hear the lawsuit, even if it is not principally competent to decide it under the international jurisdiction rules of Egyptian law (Articles 28-35 CCPC). Otherwise, the judgment creditor might be deprived of fulfilling their right after enforcing the foreign judgment in Egypt becomes impossible. See Haddad, *supra* note 10, p. 324.

case on merit, and the foreign judgment will be considered only as evidence.¹⁶ On the other hand, if the foreign rendering court only assesses whether Egyptian judgments meet the criteria for recognition and enforcement of foreign judgments, then Egyptian courts shall enforce the foreign judgment only after ensuring that it meets the requirements for enforcing foreign judgments in Egypt. Additionally, if the foreign court reviews Egyptian judgments on their merits and then decides whether to enforce them, the Egyptian courts shall similarly review the foreign judgment on merits before enforcing it. However, if the foreign court not only reviews Egyptian judgments on merits but also amends them, Egyptian courts cannot amend the foreign judgment. They can only review the judgment on merits and then decide about the enforcement because, according to Article 297 CCPC, an enforcement lawsuit is not a new lawsuit and is limited to enforcing or rejecting the enforcement of a foreign judgment under Egyptian law.¹⁷

As a result, it seems that the reciprocity requirement under Article 296 CCPC has two distinct implications. Firstly, foreign judgments are not enforceable in Egypt unless Egyptian judgments can be enforced in the country of origin. Secondly, the Egyptian court must treat the foreign judgment in the same manner the Egyptian judgments are treated in the country of origin. However, even if the courts in the country of origin are permitted to modify Egyptian judgments, Egyptian courts are not authorized to alter foreign judgments in any way. Their role is limited to reviewing the merits of the dispute for the purpose of determining enforceability.

3. JURISDICTIONAL REQUIREMENTS: THE EGYPTIAN COURTS MUST LACK JURISDICTION AND THE FOREIGN COURTS MUST HAVE JURISDICTION TO ADJUDICATE

To recognize and enforce foreign judgments in Egypt, the Egyptian courts must not have jurisdiction over the dispute, and the issuing court must be competent under the law of the country of origin. Article 298 (1) CCPC explicitly provides that:

The Egyptian courts do not have jurisdiction to decide the dispute in respect of which the judgment or the order was rendered, and the foreign rendering courts have jurisdiction under the international jurisdiction rules stated in their law.

This Article is divided into two parts: the first part confirms that for the recognition and enforcement of foreign judgments in Egypt, the Egyptian courts must not have jurisdiction to hear the dispute. Accordingly, where Egyptian courts have jurisdiction over the dispute, the foreign court is deemed incompetent to adjudicate the matter, rendering any resulting judgment ineligible for recognition and enforcement under Egyptian law. The second part of this Article affirms that the foreign issuing court must be competent according to the law of the country of origin. Therefore, if the issuing court lacks jurisdiction under the law of the country of origin, the resulting judgment cannot be recognized or enforced in Egypt as well.

¹⁶ In contrast to this attitude, Article 32 of the Riyadh Agreement explicitly confirms that there shall be no review of the merits of the judgment in the requested country. The requested court shall only ensure, on its own motion, that the judgment meets the requirements for recognition and enforcement of foreign judgments according to this agreement.

¹⁷ Haddad, *supra* note 10, pp. 324-326; Salamah, *supra* note 1, p. 634.

As a result, the application of this Article involves two successive stages. First, the Egyptian court must assess its own rules of international jurisdiction. If it determines that it is competent to hear the case, it will reject the enforcement action. Second, should the court find itself without jurisdiction over the dispute, it proceeds to the next stage by examining whether the foreign issuing court is competent, in accordance with the international jurisdictional rules established by the law of the country of origin. This approach appears to reflect the priority given to Egyptian international jurisdiction rules over those of the country of origin. Such prioritization is logical, considering the internal and unilateral nature of international jurisdiction rules.¹⁸

3. 1 . The Egyptian Courts Must Lack Jurisdiction

The interpretation of the first part of Article 298 (1) has sparked a debate in the legal literature as it explicitly states that it is impermissible to enforce a foreign judgment as long as the Egyptian courts have jurisdiction over the case, regardless of whether it is exclusive or non-exclusive jurisdiction. Consequently, the strict application of the first part significantly reduces the possibility of enforcing foreign judgments in Egypt, as the Egyptian courts have broad discretion to determine the extent of their jurisdiction and will refrain from enforcing a foreign judgment whenever they find that they have jurisdiction over the case.¹⁹ The majority of Egyptian authors believe that the mere jurisdiction of the Egyptian courts to hear the case does not automatically prevent the enforcement of foreign judgments. Therefore, they argue that this provision should be interpreted restrictively and only applies when the Egyptian courts assert exclusive jurisdiction to decide the dispute. To support this perspective, some Egyptian authors argue that if the first part of this Article intends to prevent the enforcement of foreign judgments whenever the Egyptian courts have jurisdiction to decide the dispute, there would be no need for the second part of this Article, which emphasizes the need to examine the jurisdiction of the foreign issuing court according to the law of the country of origin.²⁰ Some other authors cite Article 298 (4) CCPC to support the limited application of the first part of Article 298 (1) CCPC. They contend that, according to Article 298 (4) CCPC, if a foreign judgment contradicts an Egyptian judgment, it cannot be enforced in Egypt, and if there is no conflict, the foreign judgment can be enforced in Egypt. Therefore, they argue that Article 298 (4) CCPC reflects the Egyptian legislator's recognition of the possibility for a foreign court to be deemed competent to adjudicate a claim that has already been considered by a competent Egyptian court".²¹ Some authors also refer to the official explanatory report of the CCPC concerning Article 298 (1). The report states that:

The Egyptian lawmaker did not want to determine matters falling within the exclusive jurisdiction of Egyptian courts and those falling within the jurisdiction of both Egyptian and foreign courts. In-

18 Salamah, *supra* note 1, p. 662.

19 *Id*, p. 663.

20 Haddad, *supra* note 10, p. 337.

21 al-Rubi, M. (2013). The Plea of Declining Jurisdiction Due to Filing the Same Lawsuit before a Foreign Court. Cairo: Dar al-Nahdah I-Arabiyyah, p. 186.

stead, the lawmaker entrusted their determination to the Egyptian courts and doctrine, taking into account the developments in private international law.²²

The Egyptian Court of Cassation has also accepted the distinction between the exclusive and concurrent jurisdiction grounds of Egyptian courts.²³ The court ruled that:

Articles 298 (1) and 298 (4) CCPC stipulate that '1. the Egyptian courts do not have jurisdiction to decide the dispute in respect of which the judgment or the order was rendered ...; 4. the judgment or order must not be irreconcilable with an earlier Egyptian judgment ...'. This indicates the legislator intended to confirm that Article 298 (1) only applies when the Egyptian courts have exclusive jurisdiction to decide the dispute. However, when the Egyptian courts and the foreign rendering court are simultaneously competent to hear a dispute, the foreign judgment can be recognized and enforced in Egypt as long as it does not conflict with an earlier Egyptian judgment.²⁴

Similarly, in another case, the Egyptian Court of Cassation indirectly confirmed the distinction between exclusive and concurrent jurisdiction grounds of Egyptian courts.²⁵ This case was initiated by Jacqueline Chawafaty against Charles Chawafaty and J.P. Morgan Chase Bank. Both Charles and Jacqueline Chawafaty, Egyptian nationals domiciled in Egypt, entered into a contract with J.P. Morgan Chase Bank that included a choice of court clause designating the Jersey courts. After a dispute arose and the bank terminated the contract, Jacqueline sued Charles and the bank in Cairo. The Cairo Court of First Instance ruled that it had no jurisdiction since the Bank has no branch or representative office in Egypt and the parties had chosen Jersey courts to hear any dispute arising out of the contract. However, the Court of Cassation recognized Charles as a defendant domiciled in Egypt, thereby establishing the jurisdiction of Egyptian courts to decide the case. Nevertheless, it affirmed that even if, according to the international jurisdiction rules in Egyptian law, the Egyptian courts have jurisdiction to decide the dispute, the disputing parties have the right to conclude a choice of court agreement and submit their dispute to the courts of another coun-

²² Salamah, *supra* note 1, p. 666.

²³ Although Articles 296-298 CCPC said nothing regarding challenging the Egyptian court's decisions in enforcement lawsuits, it seems that regardless of whether the Egyptian court decided to enforce or not to enforce the foreign judgment, its decisions in the enforcement lawsuit, like other national judgments, can be contested not only before the Court of Appeal but also before the Court of Cassation. For instance, in one case, the judgment creditor requested the Cairo Court of First Instance to enforce a judgment issued by a Kuwaiti court. The court decided against enforcing the judgment. Subsequently, the judgment creditor appealed this decision to the Court of Appeal. The Court of Appeal upheld the Court of First Instance's decision and refused to enforce the foreign judgment. The judgment creditor then challenged the decision of the Court of Appeal before the Court of Cassation, which decided to enforce the Kuwaiti judgment. Decision No. 126, 27 February 1990, the Court of Cassation. See Salamah, *supra* note 1, pp. 740-743.

²⁴ Decision No. 1136, 28 November 1990, the Court of Cassation. See Mohamed, N. A. (2018). Jurisdictional competence condition in the execution of foreign judgments: A critical study in the Emirati law. *University of Sharjah Law Journal*, 15(2), pp. 49-50.

²⁵ It should be noted that Egyptian law is highly codified, and case law is not an official source of law. See El Chazli, *supra* note 4, p. 389.

try. However, to enforce the choice of court agreement in favour of the foreign selected court, the Court of Cassation required, among other things, that the Egyptian courts must not have exclusive jurisdiction to decide the dispute.²⁶

As a result, the Court of Cassation recognizes the possibility of deciding the dispute by foreign courts even if the Egyptian courts have jurisdiction to hear it. Therefore, it appears that there is a broad consensus in Egyptian law regarding the application of the first part of Article 298 (1). This Article must be applied restrictively and only when the Egyptian courts assert exclusive jurisdiction to decide the dispute, the foreign judgment cannot be recognized or enforced in Egypt.

3. 2. The Foreign Courts Must Have Jurisdiction

For the recognition and enforcement of foreign judgments in Egypt, the second part of Article 298 (1) CCPC requires the Egyptian court to control the jurisdiction of the foreign rendering court according to the law of the country of origin. This requirement seems crucial because a judgment issued by an incompetent court is considered invalid and unenforceable, even in the country of origin. It should be mentioned that the foreign judgment might be issued by a court or another organ in the country of origin. The issuing organ is irrelevant from the perspective of Egyptian law, and as long as the foreign judgment was issued by a competent organ to hear the dispute under the law of the country of origin, it can be recognized and enforced in Egypt. Therefore, under Egyptian law, it is possible to seek the enforcement of a divorce judgment issued by a foreign administrative or religious organ, provided that it is competent to issue such a judgment under the law of the country of origin.²⁷

The second part of Article 298 (1) explicitly states that the Egyptian requested court must apply the law of the country of origin to control the jurisdiction of the issuing court. This approach is commendable as it takes into consideration the international jurisdiction rules of foreign issuing courts. It also seems favourable because requiring the Egyptian requested court to control the jurisdiction of the foreign issuing court based on Egypt's international jurisdiction rules would contradict the unilateral nature of international jurisdiction rules, which solely determine the ju-

26 Decision No. 15807-15808, 24 March 2014, the Court of Cassation. For more discussion, see 1. Shazeli, Y. A. (2020).

Forum non conveniens and its effect on international jurisdiction in air transportation disputes: A comparative study. *Journal of Legal and Economic Research*, 17, 1088-1104.; 2. Farghaly, A. M. (2020). Relinquishing the Fixed International Judicial Competence of the National Courts as a Mean of Settling the Dispute of Judicial Procedures. *The University of Cairo Law Journal*, 7(8), 504.; 3. Shaaban, H. (2017). Recent trends in dismissing the international jurisdiction according to the Egyptian Court of Cassation's decision dated 24/3/2014. *International Review of Law*, 2017(3), 19-30.; 4. Badr, Y. I. (2015). Forum selection clauses in Egypt: A review of the Egyptian Court of Cassation recent award. *International Journal of Procedural Law*, 5(2), 265-271.; 5. Sadiq, H. (2014). The Extent of the Egyptian Judiciary's Right in Dismissing its Jurisdiction in Civil and Commercial Disputes. Alexandria: Maktabtu al-Wafa'a al-Qanuniyah, pp. 31-75.

27 Salamah, *supra* note 1, p. 590.

jurisdiction of national courts and do not extend to foreign courts.²⁸ Moreover, it is not acceptable to apply the law of the requested country to determine whether the courts of the country of origin are competent. This is because, to issue a recognisable and enforceable judgment, the foreign issuing court would be required to determine its jurisdiction according to the international jurisdiction rules of the requested country. As a result, the foreign rendering court must apply jurisdiction rules that were laid down by a foreign legislator. In addition, it might be impossible for the foreign rendering court to predict in advance in which country the resulting judgment would be enforced.²⁹

On the other hand, it might be challenging for the Egyptian court to determine the jurisdiction of a foreign court based on the law of the country of origin. This also raises questions about the extent to which the Egyptian courts can decide whether the foreign issuing court has the jurisdiction to decide the dispute according to the law of the country of origin. Some authors believe that the Egyptian court should respect the foreign court's decision on its jurisdiction. In other words, the Egyptian court is obligated to acknowledge that the judgment was issued by a competent court, as an incompetent court would not issue such a judgment.³⁰ Therefore, the Egyptian court cannot contradict the foreign court's decision on its jurisdiction, as it is neither more knowledgeable about the application of foreign law nor more diligent than the foreign court in applying its national rules.³¹ In contrast to this viewpoint, some other authors confirm that the Egyptian court shall examine and control the jurisdiction of the foreign rendering court. According to this viewpoint, if the Egyptian court finds that the judgment was procured by fraud or there is no substantial connection between the dispute and the country of origin, the Egyptian court shall refuse the enforcement of the foreign

28 The international jurisdiction rules of Egyptian courts are laid down in Articles 28-35 CCPC. Under Articles 28 and 29 CCPC, Egyptian courts have jurisdiction over actions brought against Egyptian nationals as well as foreign defendants domiciled or resident in Egypt, except where the dispute concerns immovable property situated abroad. According to Article 30 CCPC, Egyptian courts may exercise jurisdiction over claims brought against foreign defendants not domiciled or resident in Egypt in the following cases: where the defendant has an elected domicile in Egypt; where the dispute concerns property located in Egypt; where the obligation in question was created, performed, or is to be performed in Egypt; where there are multiple defendants and at least one is domiciled in Egypt; and in matters relating to marriage, divorce, or alimony. Under Article 31 CCPC, Egyptian courts have jurisdiction over succession matters in any of the following circumstances: when the deceased's last domicile or residence was in Egypt; when the deceased was an Egyptian national; or when all or part of the estate is located within Egypt. Article 32 CCPC confirms the role of the disputing parties in granting jurisdiction to Egyptian courts. Article 33 CCPC affirms the jurisdiction of Egyptian courts over related actions. Under Article 34 CCPC, Egyptian courts have jurisdiction to order interim measures of protection enforceable within Egypt, even if they lack jurisdiction over the principal dispute. Finally, according to Article 35 CCPC, if the Egyptian court lacks jurisdiction to adjudicate the dispute and the defendant fails to appear, the court is required to declare its lack of jurisdiction *ex officio*.

29 al-Rubi, *supra* note 21, p. 406; Salamah, *supra* note 1, pp. 657-658; Okasha, A. (2000). International Civil and Commercial Proceedings in the United Arab Emirates: A Comparative Study. Beirut: Mansurat-u l-Halabi al-Hoqqiyah, p. 200.

30 Similarly, Article 29 of the Riyadh agreement clarifies the role of the requested court in examining the jurisdiction of the issuing court. It provides that the requested court shall adhere to the facts contained in the judgment and on which the jurisdiction was based, unless the decision was issued in absentia.

31 al-Rubi, *supra* note 21, pp. 406-407.

judgment.³² The last viewpoint seems more defensible as it protects defendants from being exposed to exorbitant jurisdictions.³³

It is worth mentioning that when the Egyptian court examines the jurisdiction of the foreign rendering court, it shall only take into account the international jurisdiction of the foreign court. The official explanatory report of the CCPC explicitly confirms that:

The jurisdiction of the foreign court refers to the international jurisdiction of the foreign court and not to its domestic territorial jurisdiction. Violations of the rules of the foreign court's domestic territorial jurisdiction should not necessarily lead to the refusal of recognition and enforcement of foreign judgments. What matters is the violation that makes the judgment useless and invalid in the country of origin.³⁴

Finally, the foreign court must be competent to hear the dispute at the time the lawsuit was filed before it, regardless of whether it had jurisdiction at the time the Egyptian court is requested to enforce the foreign judgment.³⁵ For instance, the foreign rendering court may have had jurisdiction to decide a dispute involving movable property located within its territory. However, it is conceivable that after the lawsuit was filed, or even after the judgment was rendered, the movable property was moved to another country. This should not affect the jurisdiction of the foreign rendering court, as long as the movable property was located in the country of origin at the time the lawsuit was filed.

4. THE RES JUDICATA EFFECT OF THE FOREIGN JUDGMENT AND THE ABSENCE OF AN INCONSISTENT EGYPTIAN JUDGMENT

Article 298 CCPC provides that: '3. the judgment or order has the force of judged matter according to the law of the rendering court; 4. the judgment or order must not be irreconcilable with an earlier Egyptian judgment ...'. According to these requirements, for the recognition or enforcement of foreign judgments in Egypt, the foreign judgment must have the *res judicata* effect in the country of origin and must not be incompatible with an earlier Egyptian judgment.

32 Salamah, *supra* note 1, p. 672.

33 Exorbitant jurisdictions refer to legal bases upon which a court asserts jurisdiction despite the absence of a substantial connection between the forum and either the parties or the subject matter of the dispute. These jurisdictional grounds are typically characterized by two features: first, the lack of a meaningful link between the dispute and the forum; and second, a tendency to favor one party, usually the plaintiff, thereby disrupting the procedural balance between the litigants. Consequently, defendants may be compelled to litigate in a distant or minimally connected forum, raising concerns of fairness and procedural efficiency. See Elbalti, B. (2012). The Jurisdiction of Foreign Courts and the Enforcement of Their Judgments in Tunisia: A Need for Reconsideration. *Journal of Private International Law*, 8(2), 210-212.

34 Okasha, *supra* note 29, pp. 202-203.

35 Salamah, *supra* note 1, p. 680.

4. 1. The Res Judicata Effect of the Foreign Judgment

According to Article 298 (3) CCPC, the foreign judgment must have the *res judicata* effect in the country of origin in order to be eligible for recognition and enforcement in Egypt. The Egyptian Court of Cassation has explained this requirement and stated that:

The judgment has *res judicata* effect when its binding force becomes final and can no longer be challenged by ordinary means, regardless of whether it was issued as final or became so upon the expiry of the appeal period.³⁶

Notably, Egyptian law requires that the foreign judgment must have the *res judicata* effect, and it is not sufficient to be enforceable in the country of origin.³⁷ Requiring the foreign judgment to have the *res judicata* effect to be enforceable in Egypt ensures legal security and guarantees the stability of legal relationships that extend across borders.³⁸ Consequently, if the foreign judgment does not have the *res judicata* effect, it would not be eligible for recognition or enforcement in Egypt, even if it is enforceable in the country of origin.³⁹ On the other hand, it seems that since the Egyptian legislator requires that the foreign judgment must have the *res judicata* effect to be recognizable and enforceable in Egypt, the interim measures of protection are not enforceable in Egypt.⁴⁰

It should be noted that Egyptian courts shall apply the law of the country of origin to assess whether the foreign judgment has the *res judicata* effect. This is crucial because there might be some differences between Egyptian law and the law of the country of origin regarding the concept of *res judicata*. In other words, while the judgment may have *res judicata* effect under the law of the country of origin, it may be considered non-final and not carry *res judicata* effect under Egyptian law. Therefore, the Egyptian legislator explicitly affirms that the determination of whether the foreign judgment has the *res judicata* effect is subject to the law of the country of origin.

4. 2. Absence of an Inconsistent Egyptian Judgment

When the foreign judgment is inconsistent with an earlier Egyptian judgment, the foreign judgment can neither be recognized nor enforced in Egypt. The first part of Article 298 (4) CCPC explicitly confirms this requirement and provides that: 'the judgment or order must not be irreconcilable with an earlier Egyptian judgment ...'. This requirement is entirely logical as it is based on the idea that national judgments take priority over foreign ones. If a foreign judgment is enforced despite being in conflict with an Egyptian judgment, this implies that the foreign court is regarded as more competent in administering justice and resolving the dispute than the Egyptian court.⁴¹

36 Decision No. 912, 20 November 1994, the Court of Cassation. See Salamah, *supra* note 1, p. 689.

37 Haddad, *supra* note 10, pp. 353-354.

38 Salamah, *supra* note 1, p. 694.

39 Regarding the judicial orders, it is worth noting that requiring them to have the force of a judged matter means that the order is enforceable and no longer challengeable under the law of the country of origin. See al-Manzalawy, S. (2008). Jurisdiction on Private International Disputes and International Recognition and Enforcement of Foreign Judgments. Cairo: Dar al-Jamiah I-Jadydah, p. 218.

40 Salamah, *supra* note 1, p. 696.

41 Haddad, *supra* note 10, p. 356; Salamah, *supra* note 1, p. 700.

According to this Article, if a foreign judgment contradicts an earlier Egyptian judgment, it cannot be enforced in Egypt. However, it is unclear how the situation would be handled if the foreign judgment had been issued before the Egyptian one and the two were in conflict. Egyptian law does not address this scenario explicitly. It seems that the issuance date is irrelevant. Salamah believes that when a foreign judgment conflicts with an Egyptian judgment, the Egyptian judgment would take precedence, and the foreign judgment would not be recognized or enforced in Egypt. As a result, if the Egyptian judgment was issued first, it would take precedence over the foreign judgment according to this Article. On the other hand, if the foreign judgment was issued earlier, the Egyptian judgment still takes precedence. This is because the creditor of the foreign judgment must request its enforcement at the appropriate time before issuing the Egyptian judgment. Therefore, if the judgment creditor missed this opportunity, the Egyptian judgment cannot be disregarded in favour of the foreign one.⁴²

It is worth noting that if a foreign judgment is final and incompatible with a final Egyptian judgment, the Egyptian judgment would take priority. However, if the foreign judgment is final and incompatible with a non-final Egyptian judgment, it is questionable whether the Egyptian judgment still takes priority over the foreign one. Egyptian law does not provide a clear answer to this question. Some Egyptian authors believe that the Egyptian judgment still takes priority and prevents the enforcement of the foreign judgment in Egypt.⁴³ This viewpoint is likely based on the fact that the Egyptian legislator intended to confirm the priority of Egyptian judgments in Article 298 (4) without requiring the Egyptian judgment to have the force of judged matter.

It is also debatable whether the mere filing of a lawsuit in Egypt provides sufficient grounds to prevent the enforcement of a foreign judgment related to the same dispute. The Egyptian legislator is entirely silent regarding this question. Some authors believe that this issue should be left to the discretion of the requested court. The court may take the appropriate attitude towards the foreign judgment guided by considerations of appropriateness and public policy as well.⁴⁴ Salamah believes that, according to Article 298 (4) CCPC, only the existence of an incompatible Egyptian judgment is taken into consideration, rather than the initiation of a lawsuit before an Egyptian court. He contends that refusing to enforce a foreign judgment solely on the basis of a pending case before the Egyptian courts implies that any judgment subsequently issued by the Egyptian courts would inevitably conflict with the foreign judgment. Additionally, the legislator only addresses a national judgment conflicting with a foreign judgment. Therefore, it is questionable how a foreign judgment can be regarded as equivalent to a mere pending lawsuit. Furthermore, combating fraud in international civil proceedings necessitates enforcing the foreign judgment in this scenario; otherwise, it would be incredibly easy for the judgment debtor to set a barrier against the enforcement of a foreign judgment in Egypt by merely filing a lawsuit before any of the Egyptian

42 Salamah, *supra* note 1, pp. 703-704.

43 Salamah, *supra* note 1, p. 704; al-Manzalawy, *supra* note 39, p. 219; Haddad, *supra* note 10, p. 357.

44 Haddad, *supra* note 10, pp. 357-358; al-Turguman, M. K. (2003). *The International Jurisdiction and the Effects of Foreign Judgments* (Vol. 2). Cairo: al-Tubgi Publications, p. 213.

courts. However, Salamah cites an exception to this viewpoint. According to this exception, if the Egyptian court ensures that there is no fraud towards the foreign judgment, it has the right to stop the enforcement of the foreign judgment when the same lawsuit has already been filed before the Egyptian courts, provided that the Egyptian lawsuit was filed before filing the foreign lawsuit and before the issuance of the foreign judgment. In such situations, the Egyptian court can stop the enforcement process of the foreign judgment and wait for the result of the Egyptian lawsuit before taking a decision regarding the enforcement lawsuit.⁴⁵

It appears that the Court of Cassation has adopted this perspective. In one case, for instance, the court refused to enforce a French judgment on the grounds that the same case had been filed first before an Egyptian court. The Court of Cassation ruled that, under Article 25 (5) of the Judicial Cooperation Agreement between Egypt and France,⁴⁶ an Egyptian court must refuse to enforce a foreign judgment if the same dispute, involving identical parties and subject matter, had already been brought before the Egyptian courts prior to the initiation of proceedings abroad. In this case, the Court found that the respondent had filed a claim in Egypt involving the same parties and the same relief sought before commencing proceedings in France. Consequently, the Court determined that the lower court's decision to grant *exequatur* to the French judgment was a misapplication of the law and legally erroneous.⁴⁷

It is important to note that a foreign judgment may not necessarily conflict with an Egyptian judgment, but could be incompatible with another foreign judgment. In such a case, which judgment would be enforceable in Egypt? In other words, what would occur if two conflicting foreign judgments were presented for enforcement in Egypt by their respective judgment creditors? Egyptian law also does not address this issue. It appears that the timing of the judgment's issuance is not determinative, as it depends on factors related to the litigation process in the country of origin, such as the speed of dispute resolution and the volume of pending cases. Therefore, this criterion may not be effective in determining which judgment should be enforced in Egypt. On the other hand, accepting this criterion may incentivize disputing parties to litigate in jurisdictions known for the swift resolution of disputes. Salamah believes that the most effective criterion here is the date of filing the lawsuits. According to this viewpoint, the judgment issued by the first seized court would be eligible for recognition and enforcement in Egypt. Embracing this viewpoint would mitigate suspicion of fraudulent intent by the parties, as the party seeking judicial protection first does not anticipate that the opposing party might seek judicial protection in the courts of another country.⁴⁸

45 Salamah, *supra* note 1, pp. 706-707.

46 The 1982 'Judicial Cooperation Agreement in Civil Matters, Including Personal Status, Social, Commercial, and Administrative Matters (and the Cultural Protocol Annexed Thereto) between the Arab Republic of Egypt and the Republic of France'. Available online (in Arabic) at: <https://ahmedazimelgamel.blogspot.com/2020/11/331-1982.html> (last visited May 11, 2025).

47 Decision No. 19276, 23 December 2019, the Court of Cassation. Available online (in Arabic) at: <https://allied-forlegalandtaxadvice.com/%D8%AA%D8%B0%D9%8A%D9%8A%D9%84-%D8%A7%D9%84%D8%AD%D9%83%D9%85> (last visited May 11, 2025).

48 Salamah, *supra* note 1, p. 713.

5. COMPATIBILITY WITH PUBLIC POLICY

Under Egyptian law, foreign judgments are not recognized or enforced if they are inconsistent with Egypt's public policy. According to the second part of Article 298 (4), the content of the foreign judgment '... must not violate the public policy or morals in Egypt'. Therefore, if a foreign judgment conflicts with public policy, it would not be eligible for recognition or enforcement in Egypt. Given that public policy can be classified into substantive and procedural forms, this section examines each aspect separately.

5. 1. Substantive Public Policy

The foreign judgment may be inconsistent with Egypt's public policy due to its content. Public policy plays a more prominent role in matters of personal status and inheritance law than it does in civil or commercial law. In family law judgments, the influence of public policy varies based on whether the parties involved in the foreign judgment are Muslim.⁴⁹ The applicable family law for Muslims is derived from Islamic (*Sharia*) law.⁵⁰ For instance, if the foreign judgment confirms the validity of a marriage between a Muslim woman and a non-Muslim man, or requires a Muslim wife to pay alimony to her insolvent Muslim husband, it would be incompatible with public policy in Egypt. Furthermore, if a foreign judgment equalizes inheritance rights between Muslim males and females or grants a non-Muslim wife the right to inherit from her Muslim husband's estate, it would be considered inconsistent with the public policy in Egypt.⁵¹ Therefore, it can be said that when the litigants are Muslim, public policy is often closely linked to Islamic law, even though Article 298 of the CCPC does not explicitly reference it.⁵² In one case, for instance, the enforcement of a French judgment was sought, which granted custody of a Muslim child to his French Christian mother. The Court of Cassation upheld the Court of Appeals' decision to grant enforcement. The Court of Appeal, following the Court of First Instance's decision, determined that the French judgment did not contradict public policy because it was in line with Islamic law. This law allows a Christian or Jewish mother to be granted custody of a Muslim child under the age of seven, provided there is no concern that the child would be raised in a religion other than Islam. Furthermore, the Court of Cassation stated that it is established in the *Hanafi* school of Islamic jurisprudence that a mother has priority in custody matters, even if she is not Muslim, due to her presumed greater capacity for nurturing. Tenderness, in this context, transcends religious boundaries. However, the child must be removed from her care once he reaches the age of seven, or if there is a concern that he may be raised in a religion other than Islam.⁵³

49 El Chazli, *supra* note 4, p. 403.

50 Article 2 of the Egyptian Constitution establishes Islamic law as the primary source of legislation in Egypt. Additionally, Article 3 provides that the personal status and religious affairs of Egyptian Christians and Jews are governed primarily by the principles of their respective religious rules. See the Constitution of the Arab Republic of Egypt, 23 April 2019, available online (in Arabic) at: <https://www.presidency.eg/ar/%D9%85%D8%B5%D8%B1/%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1/> (last visited May 16, 2025).

51 See Okasha, *supra* note 29, p. 282.

52 Except in the areas of family and inheritance law, the influence of Islamic law is relatively limited. Instead, European legal systems, most notably French law, exert significant influence across the other branches of Egyptian law. See El Chazli, *supra* note 4, p. 389.

53 About this case, see El Chazli, *supra* note 4, p. 405.

It is important to note that when no Muslims are involved, public policy appears to be only loosely guided by Islamic law. It tends to intervene primarily in cases where there is a broad societal consensus in Egypt on certain matters, such as the rejection of same-sex marriage or slavery.⁵⁴ In addition, public policy is much more discrete when it comes to monetary judgments.⁵⁵ For example, according to the Islamic law principle of *Riba*, which refers to 'usury' or 'unjust' gains, charging interest on a loan is prohibited. However, Egyptian law typically permits charging of interest in civil and commercial transactions. Interest can be charged for loans and for delays or failures in fulfilling monetary obligations. The statutory interest rate is set at four percent for civil transactions and five percent for commercial transactions. This rate can be increased by agreement between the parties, up to a maximum of seven percent, provided that the total amount of interest does not exceed the principal amount on which it is charged. The provisions of Egyptian law concerning interest, including the limits on interest rates, are considered part of the public order in Egypt.⁵⁶

5. 2. Procedural Public Policy

Some scholars argue that the concept of public policy includes instances where a foreign court has failed to uphold the defendant's right to a fair defense. Therefore, they assert that under Article 298 (4) of the CCPC, a foreign judgment would be against public policy and unenforceable in Egypt if the defendant's right to a defense was violated during the foreign proceedings.⁵⁷ Nevertheless, the Egyptian legislator affirms this requirement explicitly in Article 298 (2) CCPC and provides that: 'the parties to the dispute in respect of which the judgment was rendered were obliged to attend and properly represented in the proceedings'. The wording of this provision may not entirely capture the legislator's intended purpose because the legislator aimed to ensure that the procedures followed in issuing the foreign judgment were conducted accurately and that the rights of defense were upheld. However, the wording of this Article may not fully support this objective. In other words, even if the parties were required to appear in court and were properly represented, other aspects of the procedures could still contain flaws or deficiencies that violate the intended rights of the defense.⁵⁸ Therefore, given the current wording's failure to fully realize the intended goal, it is necessary to interpret this Article in a way that aligns with its purpose. As a result, the requirement to appear in court and be properly represented should be interpreted as an example of respecting the defendant's right to a fair defense.⁵⁹

It is important to note that a foreign judgment may be issued in default. In this regard, the Court of Cassation has affirmed that judgments rendered in absentia can be enforced in Egypt, provided

54 *Id*, p. 404.

55 *Id*, p. 403.

56 Bremer, N. (2018). Seeking Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in Egypt and the Mashriq Countries. *Journal of Dispute Resolution*, 2018(1), 114.

57 Badr (2021), *supra* note 11, p. 435.

58 Haddad, *supra* note 10, p. 343; al-Turguman, *supra* note 44, p. 207.

59 al-Turguman, *supra* note 44, p. 344.

there is evidence that the defendant was properly summoned and represented.⁶⁰ In a recent decision, for example, the Egyptian Court of Cassation declined to enforce a Kuwaiti judgment on the grounds of defective service of process, holding that the defendant had not been duly notified in accordance with the applicable procedural standards. This case concerned the enforcement of a monetary judgment rendered by a Kuwaiti court in favour of a Kuwaiti company against an Egyptian national. By the time the proceedings commenced in Kuwait, the Egyptian national had already returned to Egypt. The Kuwaiti company obtained a favourable judgment and sought enforcement in Egypt. Both the Court of First Instance and the Court of Appeal granted enforcement. The Egyptian defendant appealed this decision, arguing that he had not been properly served in the original proceedings, as the notification had been delivered to the Kuwaiti Public Prosecution, despite his known departure from Kuwait. The Egyptian Court of Cassation set aside the enforcement order. It held that proper service is a fundamental condition for recognition and enforcement under Article 298 (2) of the Egyptian CCPC and Article 27 (3) of the 2017 Judicial Cooperation Agreement between Egypt and Kuwait.⁶¹ The Court further referred to Article 22 of the Egyptian Civil Code (Law No. 131 of 29 July 1948, *al-Qanun al-Madani*), confirming that procedural matters are governed by the law of the forum of origin (the Kuwaiti law).⁶² The Court of Cassation held that the lower courts had neglected to ascertain whether service of process was consistent with Kuwaiti procedural rules governing defendants residing abroad, thereby rendering enforcement improper.⁶³

Additionally, a foreign judgment might be issued without reasoning. Therefore, it is questionable whether the lack of reasoning or explanation for the basis of the foreign court's judgment makes it unrecognizable or unenforceable in Egypt. Some authors believe that although Article 176 CCPC requires reasoning for judgments issued by Egyptian courts, the same requirement does not necessarily apply to foreign judgments. The Egyptian Court of Cassation has also ac-

60 The Court of Cassation, 2 July 1964. See Haddad, *supra* note 10, p. 346.

61 The 2017 'Agreement on Legal and Judicial Cooperation in Civil, Commercial, Personal Status, and Criminal Matters, as well as the Transfer of Persons Sentenced to Deprivation of Liberty, between the Governments of the Arab Republic of Egypt and the State of Kuwait.' Available online (in Arabic) at: <https://ahmedazimelgamel.blogspot.com/2018/12/104-2017.html> (last visited May 21, 2025).

62 Article 22 provides that: 'The rules of jurisdiction and all procedural matters shall be governed by the law of the country where the lawsuit is filed or the proceedings are initiated'.

63 Decision No. 2871, 5 December 2024, The Court of Cassation. See Beligh Elbalti, 'Enforcing Foreign Judgements in Egypt: A Critical Examination of Two Recent Egyptian Supreme Court Cases'. Available online at: https://conflictoflaws.net/2025/enforcing-foreign-judgments-in-egypt-a-critical-examination-of-two-recent-egyptian-supreme-court-cases/?utm_source=chatgpt.com&print=pdf (last visited May 21, 2025).

cepted this approach. For example, in an enforcement lawsuit brought before the Egyptian courts, the Court of Cassation ruled that the Court of First Instance's decision to enforce a Sudanese judgment despite the lack of reasoning was completely correct and justifiable. The Court of Cassation stated that:

There are no obstacles to enforcing this judgment, as long as Sudanese law governing the lawsuit does not require reasoning. Article 176 CCPC applies only to domestic judgments issued by Egyptian courts.⁶⁴

It seems that this decision highlights the importance of interpreting the concept of public policy restrictively. In other words, not every breach of Egyptian law constitutes a violation of the public policy in Egypt. A foreign judgment is deemed to be against the public policy in Egypt only when it radically contradicts the fundamental principles of Egyptian law.

Finally, it is worth noting that since the concept of public policy is flexible and can vary depending on the time and place, the Egyptian courts shall assess whether the judgment conflicts with Egypt's public policy at the time of the enforcement application. The court may refuse the enforcement application if the foreign judgment is incompatible with Egypt's public policy at that moment, even if it was not incompatible with public policy at an earlier time.⁶⁵ Additionally, determining the extent to which a foreign judgment is inconsistent with Egyptian public policy is within the discretion of the Egyptian requested court.⁶⁶ The Egyptian court also shall apply the *lex fori* to ensure that the procedures followed in issuing the foreign judgment are consistent with the public policy in Egypt.⁶⁷

6. Conclusion

The primary aim of this study was to examine the requirements for recognizing and enforcing foreign judgments in Egypt. Regarding the reciprocity requirement, the analysis demonstrates that reciprocity, as codified in Article 296 CCPC, reflects a rigid, mirror-image approach regarding the enforcement of foreign judgments in Egypt. It is noteworthy that the current approach in Egypt places a significant burden on judgment creditors, who must demonstrate not only that Egyptian judgments are actually recognized and enforced in the country of origin, but

64 Decision No. 231, 6 May 1969, the Court of Cassation. See Badr (2021), *supra* note 11, p. 435.

65 Haddad, *supra* note 10, p. 368.

66 In most cases, the foreign judgment conflicts with the Egyptian public policy if the substantive rules of the governing law contradict the fundamental principles of Egypt. For example, a judgment that compels a Muslim wife to return to her non-Muslim husband's home reflects the attitude of the applicable law. See Salamah, *supra* note 1, p. 718-719.

67 See Salamah, *supra* note 1, pp. 207-208; Haddad, *supra* note 10, p. 345.

also the specific manner under which they are enforced. This requirement makes enforcement more difficult, creates legal uncertainty, and lowers the chances of foreign judgments being recognized and enforced in Egypt. To mitigate these adverse effects, it is recommended that Egypt strengthen its engagement in multilateral and bilateral judicial cooperation agreements. In particular, accession to instruments such as the 2019 "Judgment Convention" could serve to streamline enforcement procedures, enhance predictability, and reduce reliance on case-by-case judicial determinations of reciprocity.

Concerning the requirement that Egyptian courts must lack jurisdiction over the dispute in respect of which the foreign judgment was issued, the analysis indicates that the interpretation of the first part of Article 298 (1) CCPC has generated considerable debate, primarily due to its potential to obstruct the enforcement of foreign judgments whenever Egyptian courts claim jurisdiction. However, a careful reading of the legislative text, judicial decisions, and scholarly commentary indicates a strong consensus in favor of a restrictive interpretation. The provision should be understood to bar enforcement only when Egyptian courts have exclusive jurisdiction over the dispute. This interpretation aligns with both the structure of Article 298 and the jurisprudence of the Court of Cassation. In this context, Egyptian courts are encouraged to continue adopting a restrictive interpretation of Article 298 (1) CCPC by clearly differentiating between exclusive and concurrent jurisdiction. To improve legal certainty and bring Egyptian practice in line with modern developments in private international law, it is recommended that the legislator amend Article 298 (1) to expressly confine its application to matters falling within the exclusive jurisdiction of Egyptian courts. A proposed reformulation of the first part of Article 298 (1) could read: "The Egyptian courts do not have exclusive jurisdiction to decide the dispute in respect of which the judgment or the order was rendered, and...". Concerning the exclusive jurisdiction of Egyptian courts, the findings show that the Egyptian legislator intentionally abstained from specifying the grounds for exclusive jurisdiction, thereby entrusting their determination to the discretion of the courts on a case-by-case basis.

Regarding the requirement of controlling the jurisdiction of the foreign issuing court, the second part of Article 298 (1) CCPC states that the Egyptian court must assess whether the foreign court that issued the judgment had jurisdiction, based on the international jurisdiction rules of the country of origin. However, there is no consensus among Egyptian scholars on how far Egyptian courts should go in controlling the jurisdiction of the foreign issuing court. The study has demonstrated that Egyptian courts should be empowered to review the jurisdiction of the foreign court and deny the enforcement of the foreign judgment only in exceptional cases, such as when the judgment was obtained by fraud or where the foreign court's connection to the case is clearly unreasonable. Adopting this approach aligns with the second part of Article 298 (1) CCPC, which expressly requires Egyptian courts to verify the jurisdiction of the foreign court under the law of the country of origin.

The study has also indicated that, according to Article 298 (3) CCPC, only foreign judgments with *res judicata* effect under the law of the country of origin are eligible for recognition and enforcement in Egypt. This requirement is distinct from the enforceability of the foreign judgment in the country of origin. It reflects the Egyptian legal system's emphasis on finality and stability in cross-border legal relationships. The application of the law of the country of origin to determine whether a judgment has *res judicata* effect also reflects respect for the foreign courts in defining the finality of their judgments.

The study has also shown that the first part of Article 298 (4) CCPC prevents the recognition or enforcement of a foreign judgment in Egypt if it conflicts with an earlier Egyptian judgment. This rule aims to preserve legal certainty and uphold national sovereignty. However, ambiguity arises when a foreign final judgment conflicts with a non-final Egyptian judgment or when the same case is merely pending in an Egyptian court. Such gaps create room for procedural manipulation to delay enforcement, undermining fairness and efficiency. The absence of a rule on conflicting foreign judgments further contributes to legal uncertainty. The study has addressed all these issues and indicated that Egyptian judgments take precedence over foreign ones, even if the latter have *res judicata* effect and the former do not. Additionally, it also finds that simply filing the same case in Egypt does not justify refusing the recognition or enforcement of a foreign judgment. Moreover, in cases where two foreign judgments are in conflict, Egyptian courts should take into account the dates on which the respective proceedings were initiated. The judgment issued by the first seized court should be deemed eligible for recognition and enforcement in Egypt.

This study has demonstrated that, according to the second part of Article 298 (4) CCPC, a foreign judgment cannot be recognized or enforced if it violates Egypt's public policy or morals. The analysis demonstrates that the substantive public policy is especially influential in matters of personal status and inheritance, particularly where Muslim litigants are concerned, where principles derived from *Sharia* law often inform the content of public policy. However, in civil and commercial matters, Egyptian courts adopt a more flexible approach, intervening only in cases of clear societal consensus or significant deviation from Egyptian legal norms. On the other hand, according to the procedural public policy, the foreign judgment would be considered incompatible with public policy if the foreign court disregards the defendant's rights of defense under Article 298 (2). The Court of Cassation and legal doctrine emphasize the necessity to interpret the concept of public policy restrictively, and only violations that radically contradict fundamental principles of Egyptian law would be considered against the public policy in Egypt. It seems that Egyptian courts should continue adopting a narrow construction of public policy to avoid unnecessary refusals of enforcement and promote Egypt's credibility as a jurisdiction supportive of international judicial cooperation.

Finally, the study has established that the Court of First Instance in the district where enforcement is sought is the competent court to hear enforcement proceedings related to foreign judgments. Decisions rendered by this court may be appealed before the Court of Appeal and further contested before the Court of Cassation. Furthermore, once a foreign judgment is recognized by an Egyptian court, it is accorded the same legal effect as it holds in the country of origin, and its enforcement is carried out in accordance with the procedural rules set forth in the CCPC. Egyptian courts also have jurisdiction to resolve any disputes that may arise in connection with the enforcement of the foreign judgment, thereby ensuring judicial oversight and coherence in the enforcement process.

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