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Jordanian Case Law on Recognition and Enforcement of Foreign Judgments and Foreign Arbitral Awards

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Abstract

In international litigation or arbitration, judgments or awards can often be enforced in a jurisdiction other than the one where they were made. Foreign judgments and foreign awards will have to be recognized and enforced by the competent Jordanian jurisdiction through an exequatur. This article provides a comprehensive overview of the existing legislative framework pertaining to recognition and enforcement of foreign judgments, including foreign court orders and international arbitral awards, in Jordan. By reference to Jordanian case law, the article highlights the legal practice in Jordan and the approach of the Jordanian Court of Cassation. A systematic analysis of the Jordanian case law relating to enforcing foreign judgments over the past years shows that the Court of cassation has consistently shown a positive trend towards enforcing foreign judgments and arbitral awards. Nonetheless, the enforcement process is lengthy, with the judgment creditor having recourse to multiple levels of appeal and possibly facing some procedural and substantive concerns.

Keywords: Jordanian case law, foreign judgments, foreign arbitral awards, foreign interim measures, Jordanian Arbitration Act.

الاجتهاد القضائي الأردني في تنفيذ الأحكام الأجنبية وأحكام وقرارات التحكيم الدولي

عبدالله الضمور

قسم القانون الخاص، كلية الحقوق، الجامعة الأردنية، الأردن.

ملخّص

في إطار التقاضي والتحكيم الدوليين يجري في كثير من الأحيان تنفيذ الأحكام الأجنبية، وقرارات التحكيم التجاري الدولي في دولة خرى غير تلك التي صدرت فيها، وفق النظام القانوني الأردني يشترط لتنفيذ الحكم الأجنبي الذي يشمل الحكم التحكيمي الدولي أن يتم اكساءه الصيغية التنفيذية من قبل الجهة القضائية الأردنية المختصة تتضمن هذه الدراسة بيان الإطار القانوني القائم فيما يتعلق بالاعتراف بالأحكام الأجنبية بما في ذلك أوامر المحاكم الأجنبية والأحكام التحكيمية الدولية في الأردن ومن خلال تحليل الاجتهادات القضائية الأردنية عبر أكثر من30 سنة، تركز هذه الدراسة الضوء على الممارسة القانونية في الأردن وآليات عمل محكمة التمييز الأردنية في هذا الإطار. تظهر الدراسة من حيث الاصل الاتجاه الإيجابي للمحاكم الأردنية نحو إنفاذ الأحكام الأجنبية وقرارات التحكيم الأجنبية؛ ولكنها في بعض الأحيان قد تتميز بطول الإجراءات، إذْ يلجأ المحكوم له إلى معايير ومراحل تقاض متعددة، وقد يواجه العديد من الصعوبات الإجرائية والموضوعية التي يمكن أن تخلق حالة من عدم اليقين القانوني، ويقدم الباحث تحليلاً موسعاً لأحكام القانون والقضاء مقدماً جملة من الملاحظات والتفسيرات التي تعين الممارسين ولاسيما من الأجانب على الإحاطة بجميع المسائل المرتبطة بتنفيذ الاحكام الأجنبية، وأحكام التحكيم في الأردن..

الكلمات الدالة : الاجتهاد القضائي، الأحكام الأجنبية، أحكام التحكيم الأجنبية، القرارات الوقتية الأجنبية في التحكيم، قانون التحكيم الأردني..

1. Introduction

With an increasing number of litigated matters involving Jordanian jurisdiction, many issues come into play at the end of each matter concerning the recognition and enforcement of judgments, including arbitral awards, issued outside the territory of the State in which the recognition and enforcement is sought. At the stage of execution, the successful party seeks, before the competent jurisdiction, the recognition and enforcement of a foreign ruling, which could be a civil or commercial judgment or an arbitral award, or a ruling concerning the jurisdiction of the Jordanian religious courts.

By looking at the legal provisions in Jordan, it appears that there are many sets of legislation and international Conventions that regulate the recognition and enforcement of foreign judgments, foreign orders, and arbitral awards. Although the Law on Enforcement of Foreign Judgments of 1952 retained the concept of "enforcement", the concepts of "recognition" and "enforcement" in Jordanian private international law are intertwined and they are distinguished academically. "Recognition" refers usually to the national court proceedings on a judicial decision, often called an exequatur. Meanwhile, "enforcement" is a judicial process that gives effect to the mandate of a foreign judgment (J.Loukas a Mistelis and S.M Kroll, 2003).

Besides laws and international legal instruments, the recognition and enforcement of foreign judgments are supplemented by relevant case law.

To identify the case law appropriately, it is necessary to analyze, in a systematic way, all the decisions rendered by the Jordanian Court of Cassation from the period 1 January 1985 to 31 December 2019, to choose the most significant decisions to offer insightful materials to English speaking scholars and practitioners.

Disputes on enforcement are related to three areas: The first category is civil litigation, including commercial matters, in which the successful party seeks before the competent court to enforce and execute, under Jordanian law, foreign court orders, and foreign judgments. The second category revolves around commercial disputes that were subject to arbitration proceedings resulting in a final and binding award. The third category is related to personal status and family law including matrimonial matters and inheritance. Since this article focuses mainly on Jordanian case law in private matters, the scope of this article will be restricted only to the first two areas.

Further, this article will address many selected key issues often encountered in practice. It seeks to set out precisely the legal setting of the recognition and enforcement of foreign orders and judgments by describing the legislative framework for enforcing foreign judgments in light of the most recent laws and case law in Jordan and to examine certain challenges that foreign judgment creditors have faced, by highlighting the approach of the Jordanian Court of Cassation in many aspects related to the recognition and enforcement of foreign judgments and foreign orders. In particular, the article looks at the restrictions as to which types of judgments may be enforced; procedural concerns; foreign interim measures; the law applicable to limitation periods; and all the grounds for non-recognition and enforcement of foreign judgments including foreign arbitral awards.

Moreover, the article deals with the recognition and enforcement of arbitral awards, in the same way, the reason behind this methodological approach stems from many factors. Firstly, the Jordanian cumulative approach of applying national law and international Conventions in parallel will be discussed later in this article. Secondly, the Jordanian traditional approach which is marked by favoring the seat of arbitration in considering that an arbitral award is integrated into the national order of the seat of arbitration, which means that the award is converted by the court of confirmation in the seat of arbitration into a judgment debt and thereafter the same rights and remedies are given to the successful party as if the national courts had made the award. Thirdly, in consequence, the requirements of recognition and enforcement of foreign awards are governed mainly by the Law on Enforcement of Foreign Judgments No. 8 of 1952, hereafter referred to as "the 1952 Act". Article 2 of the later dispose of that: the term "foreign judgments" refers to "Every foreign ruling issued by a court located outside Jordan…including arbitrators' 'decisions' in arbitral proceedings if the award has become, by the laws of the country which issued the award, enforceable as an award issued by the courts in that country".

It must be pointed out that, the enforcement of arbitral awards depends on whether arbitration is considered national or international. If the arbitration is considered national, then the provisions of the Jordanian Arbitration Law would apply to

enforce the awards, on the other hand, if arbitration is considered to be international, then the provisions of the 1952 Act would apply to enforce the international arbitral award (Cass., civ., No 4186/2005). I shall show the place of international treaty law in the enforcement process.

In this regard, I will highlight the ramifications of the new amendments passed in 2018 regarding the Jordanian Arbitration Law of 2001which is traditionally considered to be a territorial law applied only to domestic arbitration. In light of the recent changes, I will address the future complications that might ensue if the parties to arbitration have agreed in clear terms that Jordan is the legal seat of arbitration and the Jordanian Arbitration Act is the law applicable to their arbitration conducted outside Jordan, and I will argue that this choice may alter the current legal dispositions on recognition and enforcement of foreign awards in Jordan. Further, to support the need for a new interpretation of Article 3.1 of the New York Convention 1958, I shall present the law applicable and the conditions of the Jordanian Arbitration Act for enforcement of the international awards in Jordan.

2. Applicable legal standards for recognition and enforcement of foreign judgments and foreign courts orders

By looking at the legal provisions, it can be seen that there are many sets of legislations and international Conventions that regulate the recognition and enforcement of foreign judgments and foreign orders issued by foreign forums and arbitral tribunals. The main regimes applicable to the recognition and enforcing foreign rulings are as follows.

(1) Arab League Convention of 1952.

(2) Riyadh Convention of 1983. Jordan signed the Convention on Judicial Cooperation between the States of the Arab League in Riyadh on 16 April 1983 and it entered into force on 30 October 1985.The Riyadh Convention deals with the recognition and enforcement of foreign judgments and arbitral awards, without reviewing the subject matter of the dispute. The Convention provides that such judgments or arbitral awards must not violate public order, morality or the constitution of the State in which enforcement is being sought, or the overriding principles of Sharia law.

(3) Washington Convention of 1965 on the Settlement of Investment Disputes Between States and Nationals of Other States, which established the International Centre for Settlement of Investment Disputes (ICSID), through which the Convention would be applied. In1972 Jordan ratified the Convention.

(4) New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention of 1958). Jordan ratified this Convention on 15 November 1979. It is worth mentioning that the list of contracting States shows that Jordan acceded to the New York Convention with the reservation that "The Government of Jordan shall not be bound by any awards made by Israel or to which an Israeli is party". This reservation may now be of little practical concern since Jordan concluded a Peace Treaty with Israel approved by the Jordanian Parliament in 1994.

(5)Bilateral Conventions on mutual judicial assistance and cooperation. For example: Convention on Judicial Cooperation between Jordan and Tunisia 1999; Convention on Judicial Cooperation between Jordan and Egypt 2001; Convention on Judicial and Legal Cooperation between Jordan and UAE 1999; Convention on Judicial Cooperation between Jordan and Algeria 2006; Convention on Judicial and Legal Cooperation in civil, commercial and personal and criminal matters between Jordan and Kuwait 2006.

(6) The 1952 Act which applied, as a general rule, to all jurisdictions in the absence of any applicable special regime provided in a special law, regulation, or international Convention.

(7) The Jordanian Civil Procedure Code ("JCPC"), particularly Article 27(3) relating to enforcing foreign interim measures.

(8) the Arbitration Law No. 31of 2001 as amended by Law No. 16 and Law No. 41 of 2018.

Therefore, depending mainly on the nationality of the judgments, the subject matter, and the existence or otherwise of an International Agreement (Conventions and Treaties), a foreign judgment can be recognised and enforced in Jordan through different procedural mechanisms. The main instruments are set out below.

2.1 ***Enforcement judgments issued by Arab State courts***

To put it briefly, judgments issued from Arab State courts can be recognized and enforced under the regulations of a

mutual Convention, under the Riyadh Arab Convention for Judicial Cooperation of 1983 (Riyadh Convention), and also under the 1952 Act. Jordan is a signatory State to the Riyadh Convention which allows the enforcement of judgments issued in a signatory State. The recognition and enforcement of foreign judgments may be sought under Articles 25 et seq of the Convention. Article 25(a) defines the judgment as: "Every decision – regardless of nomenclature – made in pursuance of judicial or jurisdictional procedures of the courts or any competent authority of any party".

Article 25(b) of the Convention sets out the requirements for enforcing foreign judgments. Foreign judgments may be recognized under the Riyadh Convention where:

- the foreign court was competent under the requested country's *lex fori*;
- the country of origin's courts do not have exclusive jurisdiction over the subject matter;
- the judgment is final under the country of origin's law.

However, pursuant to Article 25(c) of the Convention, certain judgments (i.e. judgments against governments or government employees relating to their administrative duties) are not recognized.

Article 30 of the Convention provides that recognition and enforcement may be rejected in the following cases.

1. Recognition would contradict the principles of Islamic law or the constitution and public order of the requested country.

2. The party against whom the judgment is invoked was not duly summoned.

3. The laws of the requested country concerning the legal representation of ineligible persons or persons of diminished eligibility were not taken into consideration.

4. The dispute is subject to a final judgment in the requested country, or in a third country, provided that the requested country has already recognized this judgment.

5. The dispute is subject to a case currently being heard by the requested country's courts filed prior to the application for recognition being made.

Besides all that, enforcement of a foreign judgment issued by Arab courts may also be recognized and enforced according to the Convention of the Arab League on the Enforcement of Judgments and Arbitral Awards of 1952, to which Jordan is a party. I believe that this Convention may apply in the case of the non-application of the Riyadh Convention of 1983.

2.2 ***Recognition and enforcement of foreign judgments under the 1952 Act***

Absent any applicable special regime provided in an international Convention or bilateral Treaty, recognition, and enforcement are also governed by the 1952 Act and the relevant provisions of the Jordanian Code of Civil Procedure. Legal practice and jurisprudence in Jordan consider this Act as the main legal instrument in proceedings concerning the recognition and enforcement of foreign judgments including arbitral awards.

Although the 1952 Act discusses many procedural issues on the enforcement of foreign judgments, the term "foreign judgments", as defined in Article 2, refers to "Every foreign ruling issued by a court located outside Jordan (including the religious courts) in respect of civil proceedings with their private law nature, which requires the payment of a certain sum of money, or a judgment regarding the delivery of and transfer of title to movable items, or concerning the settlement of the account, including arbitrators' 'decisions' in arbitral proceedings if the award has become, under the laws of the country which issued the award, enforceable as an award issued by the courts in that country".

Under the 1952 Act, any foreign final order issued by a foreign court or arbitral tribunal established to adjudicate a dispute in proceedings which, in consideration of their nature and subject, if carried out in Jordan, would have resulted in a court judgment regarding the following categories, namely final judgments for payment of a definite sum of money (except for taxes, fines or penalties), or judgments related to movable property (assets), or settlement of account (i.e. between the parties of a partnership), can be considered to be a judgment.

This definition, therefore, encompasses all foreign monetary judgments, court settlements formed in a judgment, and arbitral awards issued by arbitral tribunals having their seat abroad.

It is clear that the scope of the application of the above text is only confined to foreign judgments and does not extend

to all foreign executory titles such as foreign court orders, injunctions, interim measures, public deeds, or declarations of commitment issued by a foreign notary public.

The basic principles of the 1952 Act provided in Article 7 that a judgment capable of recognition and enforcement has to fulfil the following requirements:

- the judgment has to be authentically issued by a competent court in accordance with the law of the country in which it was issued;
- the judgment has a conclusive effect and may no longer be challenged, or amended;
- the defendant's rights of defense have been honored, in particular the defendant has been properly summoned for the action, and the adversarial principle during proceedings has been observed;
- the foreign judgment was not rendered as a result of fraud;
- the foreign judgment must not contain a decision the recognition of which leads to a result manifestly incompatible with the principles of the international public order and morals in Jordan;
- there must be reciprocal recognition of judgments between the two countries, otherwise Jordanian courts will not recognize and execute a judgment of a foreign court.

3. Procedures and substantive concerns during the recognition and enforcement of foreign judgments and foreign awards

3.1 Foreign judgments subject to an exequatur

To enforce a foreign judgment in Jordan, the successful party must apply for recognition (exequatur) as a preliminary step to enforcement. To apply for an exequatur, the normal procedures for initiating a lawsuit must be followed in the court of the first instance. Each party should be represented by a lawyer. According to Article 4 of the 1952 Act, the claimant must bring a civil action before the court where the judgment debtor is subject to personal jurisdiction (domicile) or where assets belonging to the judgment debtor are situated if his residence was abroad (Cass., civ., No 291/199, 6 August 1991).

Although Article 4 determines the competent court, it is unclear yet whether the claimant for an exequatur must bring the action exclusively before the Court of the first instance which has personal jurisdiction over the judgment debtor) the Court, in which area the defendant's residence exists), or before the Court which has jurisdiction over his estate or personal propriety located if he is not residing in Jordan. Some decisions of the Jordanian Court of Cassation have decided that this jurisdiction does not reveal the public policy.

The Court of Cassation pointed out this issue in deciding that: "[S]ince the respondent has no domicile in Jordan, the motion for enforcement of the foreign UAE judgment can be brought to the first instance court of the claimant's domicile or a place of work. If the claimant has no domicile or a place of work in Jordan, the Court of Amman would be the competent court under Article 47 of the Civil Procedures Code (CPC) and Article 4 of the Law on Enforcement of Foreign Judgements of 1952" (See: Cass., civ., No 105/1991, and: Cass., civ., No 221/1999).

3.2 *Parties to exequatur and evidentiary requirements*

A lawsuit to enforce any foreign judgment is brought by the judgment creditor against the debtor. The foreign judgment, as an executory title, represents a private dispositive right entitling a creditor to seek enforcement against whom he chooses from amongst the judgment debtors. Nonetheless, the scope of the application of the previously mentioned domestic provisions is not confined to foreign judgments in Jordan. The practice shows that a lawsuit for granting exequatur should be brought by the claimant against all the respondents represented in the foreign judgment. The Court of Cassation was asked to adjudicate on the enforcement of a Lebanese judgment rendered in light of the Judicial Agreement between Jordan and Lebanon of 1954. The Court of Cassation considered that: "[T]he fragmentation of the ruling is not allowed since the enforcement of the foreign judgment entails its execution against all the respondents". (Cass., civ., No 16/1973, 1 January 1973).

A motion to enforce a foreign judgment should be accompanied by the original or two certified copies of the foreign judgment; these copies must be annexed to the statement of claim, and one of them should be sent to the respondent. If the

judgment was rendered in a foreign language, a duly certified Arabic translation copy should also be annexed to it. However, the Court of Cassation, in *Arafat v. Kobaisi*(Cass., civ., No 309/2006), considered that "[S]ubmission of the original or a certified copy of the foreign judgment, duly authorized or with an attached apostille, in the course of the proceedings of the exequatur and before deciding the case, will meet the requirements of Article 6 of the Law No 8 of 1952 and is not to be considered as a submission of new evidence which is strictly limited in civil proceedings".

In addition, the courts of the first instance are empowered to reject any submitted request to obtain an exequatur if the requirements mentioned in Article 7 of the 1952 Act have not been met. The decision of the Court of First Instance is subject to a potential revision by the Court of Appeal and subject to appeal before the Court of Cassation, and once the exequatur is granted, the enforcement may be filed before the judge of execution. The process of execution presents no significant problems under the Jordanian legal system, which means that the judgment in question will be executed as a national judgment and governed almost exclusively by the national law of the particular forum where the assets are located.

In the enforcement of an arbitral award, one of the questions raised in *R.Sandoka & Son v. Boubeen & Fareed Co.,(*Cass., civ., No 874/1986) was the duty of the court to investigate the presence of an arbitration clause between the parties to the arbitration. In this case, the claimant sought to enforce an arbitral award issued in Vienna in 1983. The Court of First Instance and the Court of Appeal granted the exequatur in 1985. The respondent stressed, before the Court of Cassation, the nullity of the arbitration clause on the ground that there was no signature on the arbitration agreement. The Court of Cassation based its decision on the grounds of Article 2(1) of the New York Convention, and considered this argument, in deciding to reject the decision of the Court of Appeal. The Court of Cassation ruled that: "[I]t is therefore incumbent on the Court of Appeal to investigate this issue". It's worth mentioning that Article 2(1) provides that: "Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration".

This approach led to the conclusion that the claimant is obliged to submit a copy of the arbitration clause (arbitration agreement) before the court of exequatur otherwise recognition will be refused (See *infra* section 4.1).

Later in 2004, however, the Court of Cassation in *I.Shrari v. A.Abu Madhar*) Cass., civ., No 2923/2004) changed its position in deciding that: "[T]he submission of the original or a copy of the arbitration agreement is not necessary to enforce an arbitral award issued outside Jordan since the 1952 Act did not stipulate that". The Court of Cassation in this case did not refer to Article 4(2) of the New York Convention.

Moreover, the burden of proof of the grounds granting the courts the right to deny recognition and enforcement of foreign awards lies with the judgment debtor. In practice, a certificate or other judicial form confirming the enforceability of an award must be submitted by the winning party. More than anything, the practice shows that the motions for recognition and enforcement of a foreign arbitral award are submitted jointly with the foreign judgment confirming the enforceability of the award issued by the foreign court in the seat of arbitration. On the other hand, the losing party will have always the right to challenge the presumption that an award is binding and enforceable by raising the legal grounds for refusal.

Practice shows also that the losing party is not precluded from raising objections by challenging the validity of the arbitration agreement, the constitution of the arbitral tribunal, and the irregularity of the procedure, even if he or she failed to initiate actions to challenge or appeal against the award in the jurisdiction where the award was rendered. That leads to the conclusion that arbitration agreements in many cases have been submitted to the enforcing court in Jordan.

However, in the vast majority of cases, the Court of Cassation maintained its position that the enforcing court has no power to review an award since it was confirmed by the relevant courts in the seat of arbitration.

This approach was confirmed by the Court of Cassation in *Alwaha Insurance Company v. The New India Assurance Co. Ltd*. (Cass., civ., No 567/2009). In this case, the claimant sought, before the Jordanian courts, the enforcement of an arbitral award rendered in Saudi Arabia. The Court of Cassation asserted that the duty of the court in recognizing and enforcing the award is confined to observing the conditions mentioned in Article 7 of the 1952 Act and does not extend to

reviewing the merits or modifying its substance.

Therefore, by commencing an action on the award, the successful party will hope to obtain a court judgment in the seat of arbitration confirming the award, which can then be enforced against the losing party in the same way as any other court judgment, to avoid a potential requirement to produce, to the enforcing court, the original agreement in writing to arbitration as a condition precedent to enforcement under the New York Convention. This may prevent the losing party from relying on the Convention (Andrew &Keren Tweeddale, 2005).

In investment arbitration, where the arbitration agreement arose under the terms of a Treaty, it is thought that the Jordanian courts may enforce the award without the need for strict compliance with Article 4 of the New York Convention, by considering the provisions of Article 4 as an evidential provision and thus permitting a party to seek to enforce an arbitration award made under a Treaty without the need to supply the original arbitration agreement or a duly certified copy because it did not exist (A.&K.Tweeddale, 2005).

3.4 *The applicable law to limitation periods*

The approach to enforcing foreign judgments involves considerable uncertainty and may create numerous problems for litigating parties. Under the 1952 Act, there are no specific provisions regarding the limitation period for enforcing a foreign judgment. International practice reveals many approaches concerning the law applicable to the period of limitation, taking into consideration that the expiration of the relevant limitation period may only be invoked as a ground for challenging the enforcement proceedings.

Depending on the procedural approach of the court, the limitation period may be governed by the *lex causae* applicable to the exequatur. Nonetheless, the procedural approach of any national court may be to consider that the law applicable to a limitation period is a substantive matter thereby leading to the application of the law applicable to the merits, and is not to be considered a procedural issue entailing the application of the *lex fori* (A.Aldmour, 2019).

Since Jordanian courts can only enforce foreign judgments that are enforceable in their country of origin, I believe that the limitation period for enforcing a foreign judgment is governed by the law applicable to the foreign judgment in its country of origin.

The Jordanian Court of Cassation was asked to adjudicate on this issue in 2012. In *Arab Bank v. Alrafidain Iraqi Bank*, (Cass., civ., No 3577/2012) the claimant *(Rafidain Iraqi Bank*) sought before the courts of Amman to enforce a money judgment rendered in Iraq in 1999; the respondent asserted that the claims should be dismissed because the action was proscribed according to the *lex fori.* Consequently, the respondent raised a plea of inadmissibility, asking the court to dismiss the claim. The Court of First Instance and the Court of Appeal accepted this argument by ordering the dismissal of the claim on this ground. The Court of Cassation rejected this reasoning, deciding that the limitation period is a substantive matter, subject to the applicable law on the merits of the case (Iraqi law on execution in this case). The Court asserted that: "[A]ccording to Article 31of the Riyadh Agreement, judgments made by the courts of any contracting party and duly recognized by the other contracting parties following the provisions of this Agreement shall be executed in the territory of that contracting party so long as they are so recognized in the territory of the contracting party whose courts had made the said judgments". The Court added: "[T]he exequatur does not result in the replacement of the foreign judgment by a ruling of Jordanian courts; the judgment remains a foreign judgment and therefore the limitation period is governed by the foreign law applicable in the country in which the judgment was issued".

Unfortunately, no case law on the limitation periods of arbitral awards was raised, but one can argue that the Jordanian approach, stipulating the confirmation of the award in the seat of arbitration before enforcing the award in Jordan as a foreign judgment, is subject to the previously mentioned provisions and discussion.

3.5 *Enforcing interim measures ordered by foreign forums and arbitral tribunals*

Under the Jordanian procedural law, enforcing interim measures ordered by foreign forums and arbitral tribunal is a controversial issue. In general, spontaneous compliance with foreign interim measures has never been a universal norm (*J. Castello and R.Chahine*,2019) Without wading into many doctrinal aspects (See: Albert Jan van den Berg,1998), I believe that interim measures ordered by foreign courts or foreign arbitral tribunals may be recognized in Jordan under the

Jordanian Civil Procedure Code. I contend that Article 27(3) of the CPC consolidates the international jurisdiction of the Jordanian courts by providing that "The Jordanian courts are internationally competent in 'provisional measures' and 'conservatory measures' which enforce in Jordan even though the Jordanian courts have no jurisdiction to adjudicate on the merits".

The interpretation of this provision by the courts created many procedural concerns. The text was inserted in the Jordanian CPC in the chapter relating to the international jurisdiction of the Jordanian courts, which should be distinguished from the legal provisions on the domestic interim measures ordered by Jordanian courts in domestic litigation.

Article 27(3) states that the Jordanian courts have no jurisdiction to adjudicate on the merits, therefore the primary concern in the practical context is whether the Jordanian courts have the authority to order interim measures or whether the role of the Jordanian courts is confined to enforcing interim measures ordered by foreign forums, including interim measures issued by arbitral tribunals conducting arbitrations outside Jordan (See: Cass. Civ., No 259/2009).

In *Bank of Abu Dhabi v. A.Q. Company (Saudi Company)* (Cass. Civ., No 3916/2011) the claimant (Bank of Abu Dhabi in UAE) obtained a UAE money judgment against the Saudi company and others and sought to obtain an interim measure of "assets preservation" before the Court of First Instance of Amman against the respondent. The Amman court ruled in favor of the claimant and based its judgment because the legal provision applied to interim measures in domestic litigation. The respondent brought the claim before the Court of Appeal of Amman, arguing that the court had no jurisdiction to make such a decision regarding the respondent's assets located in Jordan. The Court of Appeal declared the interim measures ordered by the Court of the First Instance nullity on the ground that the Court of First Instance had no jurisdiction in the case. The claimant brought the case before the Court of Cassation, asserting the jurisdiction of the court to grant interim measures on the ground of Article 27(3) of the JCPC. The Court of Cassation accepted this argument and confirmed the competence of the national courts to order interim measures since the claim was based on Article 27(3) of the JCPC even though the recognition and enforcement of the main judgment were not sought in Jordan.

Concerning the Court of Cassation, I will remain in favor of this decision if the enforcement of the main foreign judgment was sought in Jordan or the claimant intended to do so. In this context, one could argue that the provisions of this special text lead to the conclusion that the jurisdiction of the Jordanian courts is confined to enforcing the interim measures ordered by the foreign forum. There are several arguments to support this contention.

Firstly, under the Jordanian legal system, interlocutory judgments and interim measures, such as assets preservation orders, do not constitute a final judgment, thus interim measures are not subject to an exequatur according to the 1952 Act and the New York Convention if issued by an arbitral tribunal. Secondly, the wording of the text of the JCPC leads to the conclusion that the role of the Jordanian courts is confined only to enforcing (executing) the interim measures issued outside Jordan and not to ordering them. Thirdly, the provisions of the text, in my opinion, apply in the context of international judicial cooperation and judicial assistance to foreign forums, in particular to arbitral tribunals.

In addition, the concern is what are the legal ramifications if the Jordanian court has ordered interim relief when it has no jurisdiction to enforce the foreign judgment or to decide the case on its merits.

Under the domestic rules regarding interim measures, the claimant must start the lawsuit before the competent court within eight days from the date of the ordering of the interim measure if he brought the motion for a such interim measure before initiating the main lawsuit. Failure to comply with this period leads to the ordered interim measure being considered null and void. The assumption that the Jordanian court, therefore, has jurisdiction to order interim measures, although it has no jurisdiction on the merit, will impose damages to the defendant's (debtor) assets because the claimant (the creditor) is merely ordered to commence the lawsuit before the competent court within eight days if these measures were initiated in domestic litigation, but these provisions are only applied to national jurisdiction, which was not the case in the above decision of the Court of Cassation.

Taking into consideration that the State's rules governing international jurisdiction are related to public policy and underline the sovereignty of the State, one can argue in this context about the finality of the interim measures rendered

under Article 27(3), if the courts have jurisdiction to order them, as interpreted by Court of cassation. In my opinion, it can be tactically deployed in an attempt to harm the respondent by using the Jordanian courts. This probably explains why the Court of Cassation should give enough attention to this matter.

It is relevant to mention in the above case, as the records show, that the claimant did not seek to obtain an exequatur for the UAE judgment before the court in Amman. In this specific decision, the Court of Cassation based its reasoning on the grounds of Article 27(3) of the JCPC without considering that the claimant had not requested the enforcement of the interim measures ordered by the UAE court.

Moreover, the Court of Cassation stated in its decision that "[T]he scope of application of the provisions of Article 27(3) gives jurisdiction to the Jordanian courts to treat the interim measures enforced in Jordan at the time when the case is initially brought before other courts in another country". This statement confirms my argument about the competence of the Jordanian courts to only enforce the interim measures obtained abroad and not to order such interim measures because of a lack of jurisdiction. The claimant initiated and obtained interim measures from the UAE court, but in this case, he based his request independently of the interim measure issued in the UAE by asking the Jordanian court to order such an interim measure.

To reduce the impact of this decision, I hope that the Court of Cassation treated the interim measure as a domestic issue subject to the legal provisions on national actions, by considering that the claimant has the right to request such an interim measure by the Jordanian courts if he brought an action for recognition and enforcement of the foreign judgment before the Jordanian courts, or if he intended to do so, and not to rely on Article 27(3) of JCPC. Based on the foreign judgment, I believe that the successful party is entitled to file a request for interim reliefs or interim measures before and during the course of enforcement proceedings (exequatur) according to Article 4 of the 1952 Act which makes provision for the applicability of the arrangements set out in the JCPC.

Thus, such a request to obtain an interim measure is granted in support of the recognition and enforcement of the foreign judgment if the claimant can demonstrate the plausibility of his right, the likelihood of success of the exequatur, the existence of a concrete risk of damage to that right, and if there is a sufficient jurisdictional link to Jordan, for example, if the assets are located in Jordan or the defendant resides in Jordan. Therefore, if the claimant obtained his request, the outcome of such an interim measure remains pending at the end of the exequatur proceedings. On the other hand, if the claimant intended to enforce the foreign judgment, he should initiate the exequatur within eight working days of obtaining the interim measure.

In this regard the Court of Cassation (Cass., civ., No 309/2006) considered that Article 141 of the CPC authorized the judge of urgent matters)the President of the Court of First Instance) to make an order of preventive detention during the enforcement of a foreign ruling. (See also: Cass., civ., No. 27/2002).

Before the Jordanian courts, different judicial interpretations and divergent treatment of procedural and jurisdictional challenges are predictable and some questions remain to be asked.

In *Hassan, Zauhdi, and Nadia v. A.Aljoundi(*Cass., civ., No 1523 /2018), the Court of Cassation was able to ignore the provisions of Article 27(3) of the JCPC. In this case, the dispute arose between the claimants and the respondent who submitted their dispute to arbitration in Dubai. By the end of the arbitration, an award was issued by the sole arbitrator in UAE ordering the claimants to pay the respondent about 17.5 million UAE. The award was confirmed by the Court of First Instance and the Court of Appeal in Dubai. Before filing an appeal before the Court of Cassation in Dubai to challenge the award, the claimants honored the award by paying a sum of money to the respondent. The Court of Cassation decided to set aside the award and accordingly the claimants sought to execute this court decision by requesting the judge in Dubai to order the reimbursement of the paid sum of money. The judge in Dubai issued an interim measure (conservatory measure) to be executed in Jordan. The claimant sought to enforce the interim measure before the Jordanian courts. Unfortunately, the Court of First Instance, the Court of Appeal, and the Court of Cassation rejected the motion to enforce this order because the interim measure in question did not represent an enforceable judgment subject to the Bilateral Treaty between Jordan and UAE, and the provisions of the 1952 Act.

Regarding foreign interim measures issued by arbitral tribunals, despite the international recent trend to enforce such interim measures ordered by the international arbitral tribunal(see: Castello and Chahine,2019), the general enforceability of "interim measures" ordered by the arbitrators under the New York Convention has not been widely realized and it is still a controversial question since the New York Convention emphasizes enforcement of "awards" (George Bermann, 2017). In Jordan, unfortunately, no case law on this issue was raised.

The Jordanian courts may find as it decided in *International Inc. v. Ray Bolwell and Resort Condominiums, Pty Ltd*,)in Castello and Chahine, *2019),* that an award under the New York Convention must be binding on the parties in the sense that it 'determines at least all or some of the matters referred to the arbitrator for decision', in contrast with an interim measure that, by its nature, may be rescinded, suspended, or varied by the tribunal which pronounced it.

Nonetheless, to make sure predictability in international commercial dealings and consistency among jurisdictions, an interpretation could be adopted by considering that enforcement of interim measure orders issued by international arbitral tribunals is consistent with the objectives of the New York Convention, and the UNCITRAL Model Law (Art.17), namely to favor the enforcement of arbitration agreements, the rules to which the parties agreed, and arbitral awards. The courts may consider that the interim measure finally disposes of a particular request on the dispute, even if the measure does not itself resolve part of the dispute. In addition, there is a commonly accepted approach that the courts should assist in arbitration proceedings. In this regard Article 8 of the Arbitration Act provides that: No court shall intervene except in cases provided for therein without prejudice to the arbitral tribunal's right of asking the competent court for assistance in the arbitral proceedings. See Article 23 of the Arbitration Act.

Following the approach of the Model Law providing for the recognition and enforcement of interim measures granted by the arbitral tribunal, and in light of Article 27(3) of the CPC as stated above, I think that the arbitrators-ordered interim measures are enforceable by the Jordanian courts.

4. Jordanian case law pertaining to the grounds for denying recognition and enforcement

In an international context, numerous disputes, including those involving money judgments, movable assets, employment, personal injury, and various tort claims would benefit from Conventions and domestic enforcement regimes as a mechanism providing for recognition and enforcement of foreign judgments.

By examining many cases involving the international recognition and enforcement of foreign judgments in Jordan, it appears that many court decisions relied only on the provisions of the 1952 Act, some court decisions relied only on the provisions of international Conventions, whilst yet other decisions followed a cumulative application of the domestic law (the 1952 Act) and the international Conventions (mainly the New York Convention and the Riyadh Convention). The cumulative approach can be discerned in Jordanian case law and is primarily viewed as a means of facilitating the enforcement of foreign judgments as this article will demonstrate.

On the other hand, the list of mandatory grounds for non-recognition and enforcement is relatively restrictive. Article 7(1) of the 1952 Act states that a foreign judgment will not be recognized and enforced where:

1- the foreign court did not have international jurisdiction over the subject matter of the dispute;

2- the respondent did not have his place of business or residence within the (territorial) jurisdiction of the foreign court and did not submit to the court's jurisdiction voluntarily:

3- the respondent was not duly summoned or represented;

4- the judgment was obtained by fraud;

5- the respondent proved that the judgment has not become final and enforceable;

6- the relevant subject matter conflicts with Jordanian public order;

Article 7(2) provides: the country of origin does not recognize or enforce judgments made by Jordan (reciprocity).

Other grounds for denying recognition and enforcement of foreign judgments are not dealt with in this Act, such as, for example, if the foreign judgment conflicts with another final and conclusive judgment issued by a Jordanian court or foreign forum; or if the foreign judgment is conclusive on its merits and cannot be challenged domestically based on an

error in fact or law; or in the case where the foreign proceedings were contrary to a forum selection clause or arbitration agreement. The approach of the Court of Cassation is to consider that the grounds listed in Article 7(1) of the 1952 Act were exclusive and as it decided in *Ahamad Alyah v. Bank Abu Dhabi* (Cass., civ., No 2037/1999) that: [T]he duty of the enforcing court is to decide to accept or reject the motion, and not to examine the foreign judgment based on an error in law"., but in my opinion, nothing hinders the courts from examining these issues if they are included in any international Convention.

Moreover, the Arbitration Act of 2001 does not contain any provisions related to the recognition and enforcement of foreign arbitral awards, only the New York Convention, the Riyadh Convention, bilateral or multilateral Conventions, and the Act of 1952 are the legal provisions governing recognition and enforcement of international arbitral awards. Traditionally, the Arbitration Act is mainly applied to domestic arbitration, governing all arbitrations taking place in Jordan. Nonetheless, this article will analyze the amendments to the Arbitration Act introduced in 2018 to consider the possibility of enforcing international awards within the scope of these amendments, particularly when the parties to arbitration have chosen Jordan as the seat of arbitration and the Jordanian Arbitration Act as the law applicable to their arbitration conducted outside Jordan.

Before examining the mandatory grounds set out in the 1952 Act, it is worth mentioning two aspects: the first is related to the cumulative approach, and the second is related to the presumption of enforceability.

4.1 *The cumulative application of Conventions and domestic law (the 1952 Act)*

The Court of Cassation adopts a cumulative approach in applying the provisions of an international Convention with the provisions of the 1952 Act despite the supremacy principle of international Conventions which is established in the Jordanian legal system.

In *Across-East for Engineering and Construction Company v. Henry Boot Railway Engineering*, (Cass., civ., No 768/1991) a dispute arose between a British company (claimant) and a Jordanian company (respondent) and was subject to arbitration under the auspices of the ICC arbitration rules. The award issued in France by the sole arbitrator was granted confirmation in 1987 by the President of the court of the first instance in Paris. The winning party (the British company) sought to obtain recognition and enforcement of the judgment before the Court of First Instance of Amman. The decision to grant the exequatur was upheld by the Court of Appeal of Amman on the ground that: "[T]he foreign judgment conforms with the 1952 Act and the provisions of the New York Convention".

The Court of Appeal considered that the award was binding since it was confirmed in its country of origin as a judicial decision capable of being enforced in Jordan, was not subject to appeal following Article 24 of the 1988 ICC rules and that it fulfilled the conditions required by the French legislature which conferred the authority of *res judicata* on the award as soon as it was issued (former Article 1476 of the French Code of Civil Procedure). The respondent filed an appeal before the Court of Cassation to challenge this reasoning and claimed that the award should be enforced only following the provisions of the former Jordanian Arbitration Law of 1953. The Court of Cassation dismissed the appeal and considered the foreign award to be a foreign judgment on the grounds of the 1952 Act and the New York Convention.

The Jordanian Court of Cassation held that the foreign award was granted confirmation in the seat of arbitration within the meaning of Article 2 of the 1952 Act, and accordingly, was subject to the provisions of this Act and not subject to the Jordanian Arbitration Act. Paradoxically, however, concerning the grounds for appeal, the Court examined the finality and enforceability of both the arbitral award and the foreign judgment in their country of origin in light of the 1952 Act (Fathi Kemicha, 1996).

In this case, the Court of Cassation ruled that: "[T]he international Convention prevails over national law and its application is mandatory". Again, however, the Court was satisfied that the arbitral award was valid, both under the provisions of the 1952 Act and under the New York Convention. The Court held that "[T]he judgment for which enforcement is sought does not contain any of the grounds for rejection provided for by the 1952 Act or by the New York Convention".

This is not an isolated decision as this article will demonstrate; many court decisions followed the cumulative approach by citing first the 1952 Act and the International Conventions. (see Nathalie Najjar, 2018). Jordanian case law maintains

its position on the requirement of a double exequatur for the enforcement of foreign judgments, according to the 1952 Act, as the Court of Cassation (Cass., civ., No 3923/2004) ruled "[I]t follows from Article 2 of the 1952 Act that the foreign judgment must incorporate the arbitral award of which enforcement is sought if this award is to be enforceable".

4.2 *The presumption of enforceability of foreign judgments*

The Jordanian Court of Cassation has traditionally taken a broad approach in dealing with the presumption of enforceability of foreign judgments, but this presumption can be rebutted by the respondent.

In *Raad Dowik v.Amir Sirialdin (*Cass., civ., No 5958/2019), and *Alsahlawy & Alali v. Alrubihat*, (Cass., civ., No 4503/2019) the Court of Cassation confirmed this position in stating that "[T]he examination of dispositions set out in Article 7 of the 1952 Act demonstrated that the main rule is the enforceability of the foreign judgments in Jordan, nonetheless, the legislature has made exceptions to this rule, stipulated in the same Article, to challenge this presumption".

Consequently, following Article 7 of the 1952 Act, the Jordanian courts do not review the judgment on the merits since the process of recognition and enforcement is thought to focus only on the "formal requirements",(See *e.g.*: Cass., civ., No 3583/2004) and since the recognition of foreign judgments in Jordan is considered a declaratory process, resulting in a declaratory judgment, the judgment can only be challenged if it does not comply with the formal requirements and conditions set out in Articles 2 and 7 of the 1952 Act.

This approach was also confirmed by the Court of Cassation in *Petra International Banking Corporation (PIBC)*. (Cass., civ., No 2235/2006). After examining the case in hand, the Court stated that: "[T]he courts requested to adjudicate the enforcement of foreign judgments are not supposed to review the merits of the case or alter the pre-existing legal situation but are solely to assess the existence of requirements for recognition and enforcement as stated in Article 7 of the 1952 Act". Additionally, the Court of Cassation ruled that: "[I]n accordance with the 1952 Act, the Jordanian courts may reject the enforcement of foreign judgments under certain conditions, none of which applied to the case in hand".

Recently, in *Seven Seas Shipping Co v. White Whale Shipping LTD*, (Cass., civ., No 6774/2018). the Court of Cassation ruled that: "[T]he grounds entitling the court to reject the recognition and enforcement of a foreign judgment set out in Article 7 are restricted and based on the discretional authority of the court".

4.3 *The grounds that entitle the courts to deny the recognition and enforcement of foreign judgments and arbitral awards*

4.3.1 Jurisdiction *ratione materiae*

Unlike the Riyadh Convention which provides that to enforce a foreign judgment, the foreign court should have jurisdiction over the subject matter according to the law of the country of origin, the 1952 Act does not provide any further definition of the first ground for non-enforcement (i.e., what constitutes jurisdiction *ratione materiae* of the foreign court). However, doctrine and jurisprudence have consistently characterized this issue solely from the perspective of the foreign courts rendering the judgment, referring generally to the foreign *lex fori*.

In *Arab Bank v. Ahamad Qusiby Co*, (Cass. Civ., No 8182/2018) after reviewing all the facts provided by both disputing parties, the Court of Cassation ruled that: "[T]he money judgment rendered by the Saudi Committee for the Settlement of Banking Disputes ("the Committee") established according to the Saudi Royal Order (number 8/729 of 1987) constitutes a final conclusive judgment under the 1952 Act since the Committee established under Saudi *lex fori* rejected the appeal submitted by the respondent".

Although the question of the status of the Committee, as to whether it properly constitutes a court, has never been raised in the course of proceedings before the Jordanian courts, the question was raised in Saudi Arabia in 2011 when the Board of Grievances was petitioned by a bank customer seeking to prevent enforcement of a decision against it issued by the Committee on the ground that the decision issued by the so-called Committee was not that of a court and therefore should not be enforced by the relevant executive authorities. A subsequent Royal Order made it clear that the Committee's judgments should be considered final, thus preventing any court from hearing disputes relating to them (A. Al-Abduljabbar and others, 2012).

In *R.Sandoka & Son v.Boubeen & Fareed Com*,(Cass., civ., No 874/1986) the claimant sought to enforce an award

rendered outside Jordan in 1983 following the rules of the Vienna Stock Exchange Arbitration Chamber. Both the Court of First Instance and the Court of Appeal granted the exequatur. The respondent raised before the Court of Cassation the fact that the Court of Appeal based its decision on the ground that the award was enforceable as a foreign judgment defined in Article 2 of the 1952 Act, and following Article 7(1)(a) of the 1952 Act, which stipulated that the foreign forum should have jurisdiction *ratione materiae*, and since the verification of the jurisdiction was a required condition, the arbitral tribunal had no jurisdiction to settle the dispute on the basis that the arbitration agreement was not signed by the respondent. The respondent further alleged that the award was not enforceable at the place where it was rendered and that it could not, therefore, be enforced in Jordan.

The Court of Cassation overturned the decision of the Court of Appeal and ruled that: "[T]he judgment of the Court of Appeal confirming the decision rendered at first instance, was based on the ground that the award is a foreign judgment following Article 2 of the 1952 Act, and on the ground of Article 1(2) of the New York Convention which provides that 'arbitral awards' shall include those made by permanent arbitral bodies to which the parties have submitted their dispute". The Court of Cassation concluded that: "[I]t is clear that the Court of Appeal based its decision, in granting the exequatur, on the ground that it is a judgment issued by a permanent arbitral body to which the parties have submitted their dispute, and since Article 7(1)(a) requires the jurisdiction *ratione materiae* to make the judgment enforceable, the claimant should establish, before examining the other requirements for granting the exequatur, that there is a valid arbitral agreement".

4.3.2 .The lack of personal and territorial jurisdiction of a foreign forum over the judgment debtor

Article 7(1)(b) provides that a court may refuse to enforce a foreign judgment if (1) the respondent does not have his place of business (work) nor is resident in an area under the jurisdiction of the court that issued the foreign judgment, or (2) if the respondent did not attend the court by his own choice, and has not acknowledged its jurisdiction.

As defined in Article 7(1)(b), personal jurisdiction is required in cases of personal commercial conduct, domicile, voluntary appearance, and prior consent to the jurisdiction of the foreign court.

The second ground for non-enforcement may hinder the possibility of recognition and enforcement of such a foreign judgment where Jordanian parties are involved, particularly if they do not have their place of residence or business within the (territorial) jurisdiction of the foreign court (Nicolas Bremer, 2018). The possibility that the respondent submitted to the court's jurisdiction is less common as the jurisprudence of the Jordanian courts shows, particularly as certain matters are subject to the exclusive jurisdiction of Jordanian courts, such as disputes concerning commercial agencies operating in the territory of Jordan (A.Aldmour, 2020).

Many decisions require that a claimant, seeking to enforce a foreign judgment must show that the foreign court meets the requirements of personal and territorial jurisdiction over the respondent or his property according to Article 7 of the 1952 Act.

In *Alrafidai (Iraqi Bank) v. Arab Investment Bank* (Cass., civ., No.1351/2014), the claimant sought to enforce a foreign judgment against the Jordanian Bank, but both the Court of First Instance and the Court of Appeal ruled against the enforcement of the foreign judgment in Jordan. The Court of Cassation confirmed this position. The main point considered by the Court of Cassation was the lack of personal jurisdiction by the foreign court over the respondent. The Court of Cassation held that: "[I]t has not been established that the respondent had undertaken any work or business within the jurisdiction of the court where the judgment was issued. Besides, the respondent had not been resident within that jurisdiction, and he did not attend the court proceedings voluntarily, and had not acknowledged the court's jurisdiction". (See: Cass., civ., No. 958/2014)

In *Jolly Motor S.R.L. v. Alrossan Co and others* (Cass., civ., No.8456/2018), the Italian company, the claimant, obtained a money judgment rendered by an Italian court against the respondents. The claimant sought to enforce the judgment in Jordan, and both the Court of First Instance and the Court of Appeal ruled, in the first resort, in favor of the enforcement of the foreign judgment. The respondents appealed to the Court of Cassation, alleging the lack of personal and territorial jurisdiction over them. The Court of Cassation rejected the exequatur, ruling that: "[S]ince the foreign judgment shows that the domicile of the respondents is located in Amman/Jordan, it leads to the conclusion that the

respondents were not residing within the jurisdiction of the court in Italy at the time of initiation of the lawsuit, and they had not acknowledged its jurisdiction. Besides, the respondents were not duly summoned since they were not residing within the jurisdiction of the court, and they did not have the opportunity to exercise their right of defense in the case" (See also: Cass. civ. No 2037/1999).

It is worth mentioning that granting an exequatur is, in some cases, subordinated to the respondent's conduct before the foreign courts. Consequently, if the question of jurisdiction was not raised before the foreign courts, it will not acceptable to raise it in the course of recognition and enforcement before the Jordanian courts. This has been stated by the Court of Cassation in many cases. (For example, Cass., civ., No1141/2004).

In the enforcement of arbitral awards, this problem may not arise since the parties have already agreed to submit the dispute to arbitration.

4.3.3 The respondent was not duly summoned or represented

As set out in Article 7(1)(c), the courts may refuse enforcement of a foreign judgment if the judgment debtor did not receive a notice to attend the foreign court's proceedings, or if he did not appear before the foreign court despite the fact that he has his place of business or his residence within the jurisdiction of the foreign court.

Normally, the lack of proper notice allows courts to refuse recognition and enforcement of a foreign judgment. The 1952 Act does not provide any details about what constitutes sufficient notice, nor does it make any provisions regarding the due process of law in foreign proceedings. The 1952 Act is also silent as to the impartiality of the foreign court, the opportunity for a full and fair trial, or regular proceedings, etc., the only requirements stipulated by the text are the jurisdiction *ratione materiae*, personal competence, and the notice of attending the proceedings, without providing any supplemental details. However, the Jordanian courts may rely on procedural fairness and general principles of procedural law when considering whether a foreign legal system meets the necessary standards recognized in international litigation.

In addition, paragraph (c) of Article 7(1) does not indicate whether the notice should be received in sufficient time or a special form. This issue is principally governed under the foreign law applicable to the procedure, but it may jeopardize a defendant's rights in establishing his defense, especially in the case of service by publication for example. The provisions of Article 7(1) (c) are also not clear on default judgments.

In *Jolly Motor S.R.L. v. Alrossan Co*, the Court of Cassation held that: "[T]he respondents were not duly summoned since they were not residing within the jurisdiction of the court which rendered the judgment, and they did not have the opportunity to exercise their right of defense before the foreign court"(See also: Cass., civ., No 2037/1999). The Court of Cassation (Cass., civ., No 825/2008) considered that the notice sent by the Kuwaiti court was null and void since it was sent to the respondent's place of work at a time when he was no longer working there (see also: Cass., civ., No 4073/2013). Accordingly, in deciding many cases, the Court of Cassation interpreted Article 7(1)(c) in an equally strict way, providing that the respondent has to be present or at least duly represented during the proceedings so that a foreign judgment can be recognized and enforced in Jordan.

Moreover, a strict reading of recent Jordanian case law appears to suggest that a default judgment cannot be recognized and enforced in Jordan.

In *Alsahalwy v. Alrobihatte(*Cass., civ., No. 6521/2018), the Court of Cassation interpreted Article 7(1)(c) in the following way: "[T]he purpose of the legislation is to protect the respondent by enabling him to defend his case adequately. While it has been established that the respondent was notified of court proceedings at his last residence in Qatar, the Court of First Instance and the Court of Appeal should discuss the legality of this notification". The Court of Cassation added, "[E]ven though the foreign judgment indicates that the respondent was legally invited to attend the court proceedings in Qatar, it is not sufficient to accept that the respondent was duly represented since the judgment was rendered in the respondent's absence; this is why the appealed judgment should be overturned".

Similar decisions were rendered by the Court of Cassation confirming that this interpretation of Article 7(-1)(c) extended to due process, maintaining the same approach for default judgments, in deciding that: " the jurisprudence of the Court of Cassation has established that foreign judgments rendered outside Jordan which prevent the respondent from

exercising his rights of defense are not enforceable in Jordan"(Cass., civ., No. 8456/2018; Cass., civ., No 4827/2018; Cass., civ., No 2959/2005; Cass., civ., No 3549/2005; Cass., civ., No. 3158/2002).

This approach was strongly asserted in *Mubarak & Barakat v. Sh. Ma'aly* (Cass., civ., No.1258/90), where the Court of Cassation (Plenary Assembly) considered that: "[F]oreign courts' orders which require the debtor to pay a sum of money according to foreign procedural law (the Kuwait Code of civil procedure) in the absence of the debtor before the court, or where the respondent was not given proper notice of the court proceedings to be able to present his case, should not be enforceable as a foreign judgment in Jordan according to Article 7(1)(c) of the 1952 Act".

The same interpretation has been extended to Bilateral Agreements concluded between Jordan and other countries. In *Finance House v. F. Sylatte* (Cass., civ., No 4827/2018), the claimant (*Finance House*) was a UAE company that sought, before the Jordanian courts, the enforcement of a UAE default judgment against the respondent. The Court of Cassation maintained its interpretation of Article 7(1)(c) using a cumulative approach, by referring to the Bilateral Agreement between UAE and Jordan and the 1952 Act. The Court rejected the enforcement of the foreign judgment on the ground that: "[T]he notice sent to the respondent was returned to the First Instance Court of Abu Dhabi showing that the respondent had quit the work and left the UAE. Article 7(1)(c) of the 1952 Act and Article 19(b) of the Bilateral Agreement between the UAE and Jordan on judicial cooperation provide that the court of the other country can deny enforcement of judgment if the judgment debtor was not duly summoned or represented before the court of origin".

Nonetheless, in *W. Bazary v. Petra for General Supplies Co* (Cass., civ., 2946/2018), the Court of Cassation confined itself in its judgment to applying only the provisions of the Riyadh Convention when ruling that: "according to Article 34(c) of the Convention, the claimant should produce a copy of the document whereby notice of the judgment was served, attested to as a true copy, or any other document demonstrating that the defendant had been duly and expressly notified of the action on which the judgment was pronounced when this was pronounced in the absence of the defendant".

Regarding the enforcement of arbitral awards, the Court of Cassation interpreted Article 7(1)(c) to provide that the respondent has to be present during arbitral proceedings or that, at the very least, he has actually to have been served with notice of the arbitration proceedings.

In *Cargill-Incorporated Corporation v. Al-Qarya Food & Vegetable Oil Industries*(Cass., civ., No 4114/2016), the disputing parties agreed to submit their dispute to the International Centre for Dispute Resolution (ICDR) under the American Arbitration Association (AAA) Commercial Arbitration Rules. The sole arbitrator rendered a decision in 2010, deciding that the respondent (*Al-Qaray Food*) had to pay the claimant 711,756.35USD, and 2,228 USD corresponding to the remuneration of the arbitrator, as well as 10,878.51USD representing the share of the costs of this arbitration. The claimant sought, before the court of the first instance, to enforce the award after it was confirmed in 2011 by the 4th District Court of Hennepin in Minnesota. The Court of First Instance and the Court of Appeal granted an exequatur.

The respondent filed an appeal before the Court of Cassation, raising the claim that the arbitral tribunal had conducted *ex parte* arbitration proceedings without the respondent participating. The respondent alleged that it did not receive a notice to attend the arbitral proceedings. The Court of Cassation rejected the appeal, despite the respondent's objections, regarding the "*default award*". The Court ruled that: "[T]he arbitration was conducted under US rules, and a notice to attend the arbitral proceedings was issued to the respondent, but the respondent did not appear before the arbitral tribunal and gave no reason justifying its absence, leading to the conclusion that this argument cannot be accepted as a good reason to challenge the recognition and enforcement of the award in question since it was confirmed by the US courts".

A practical problem that remains is what happens if the respondent was not duly summoned or represented during the award process of confirmation in the seat of arbitration.

Confirmation is a process by which the successful party in an arbitration seeks, at the place where the award was made, to transform the award into a binding court judgment that is capable of being enforced and executed against the losing party. Confirmation of the award may be advantageous. Instead of seeking to enforce the award under the New York Convention, the successful party may have the award confirmed as a national judgment since the New York Convention will apply only to the arbitration award and not to the foreign judgment. Therefore, in my opinion, even confirmation does

not constitute a ground of appeal or a challenge to an award; the Jordanian courts will consider the validity of such a confirmation process in light of the foreign *lex fori*.

In *Alriyad Vegetable Oils MFG. Co.v. Pacific Inter-link Sdn Bhd* (Cass., civ., No 4095/2018), the claimant (*Pacific Inter-link Malaysia*) sought to enforce an award confirmed by the High Court of Malaysia against the Jordanian company. Both the Court of First Instance and the Court of Appeal granted an exequatur. The respondent raised before the Court of Cassation that it had not been summoned during the process of confirmation. The Court of Cassation accepted this argument on the ground of Article 7(1)(c). The Court of Cassation, therefore, asked the Court of Appeal to investigate whether the respondent was required to attend or not according to the Malaysian Law of Arbitration during the confirmation process.

As this judgment demonstrates, the enforcement process of awards can be long and convoluted with the winning party to arbitration having recourse to multiple levels of appeal and maybe having to face some procedural and substantive concerns in the enforcement of awards. This is due to not using the New York Convention as a separate means of recognition and enforcement of the award. Moreover, the inconsistency of the judgments rendered by the Jordanian courts could represent an added risk.

4.3.4 The judgment was obtained by fraud

The 1952 Act is ambiguous, it only refers to fraud as a general concern without any further indication factors; namely, whether it concerns the conflict rules determining the substantive law on which the foreign judgment was based, or whether it concerns if the judgment was obtained by fraud in connection with jurisdictional factors, or whether it concerns the claimant's conduct in obtaining the foreign judgment through wrongdoing to prevent the respondent from having adequate opportunity to present its case, or whether the fraud has been raised as a defense in the foreign proceedings, or whether it should be a new claim which was not the subject of the prior adjudication.

I believe that courts would refuse the enforcement of a foreign judgment if it had been obtained by fraud, which need not be only concerning the merits of the matter but may also be concerning jurisdictional factors.

Jordanian case law is silent about this issue. Only a few indications are found in some cases, but they do not provide any solid grounds which could lead to a reliably predictable judgment.

In *Alzoubai v. Maklouf* (Cass., civ., No1133/2007), the claimant sought to enforce a USA judgment rendered by the Iowa courts in favor of the claimant. The Court of First Instance and the Court of Appeal granted recognition of the judgment. The respondent appealed to the Court of Cassation, arguing that the judgment had been obtained by fraud. The Court of Cassation responded in these terms: "[T]he fraud was just an allegation since the respondent was represented by a lawyer during the proceedings".

However, courts are entitled to deny recognition and enforcement to judgments involving clear and convincing evidence of the alleged fraud which has been submitted by the respondent. The court may examine the foreign judgment for allegations of fraud under its power to investigate public policy requirements ;the reason behind this is the rule that fraud vitiates everything, which rule could be considered as a general principle of law.

Article 7(1)(d) also does not provide any indication as to whether the fraud in procuring the foreign judgment needs to have been raised as a defense in the foreign proceedings or not. It is clear that, under the Jordanian system of recognition and enforcement, domestic courts during the process of enforcement are not supposed to review the merits of the case or alter the pre-existing legal situation. However, I believe that the merits of a foreign judgment can only be challenged for fraud where the allegations are serious and new and were not subject to prior adjudication before the foreign courts. Since the interpretation of the law is left to the judge on a case-by-case basis, I also believe that Jordanian courts can refuse, in certain circumstances, to enforce foreign judgments where material facts arise, which were not previously disclosed, but that potentially challenge the evidence that was before the foreign court.

Nonetheless, in the vast majority of cases where fraud was alleged before the Jordanian courts, the answer of the enforcing courts was "the respondent did not establish that the foreign judgment was obtained by fraud (See: Cass., civ., No1141/2004).

4.3.5 If the respondent proved that the judgment has not become final

Article 7(1)(h) provides that courts may refuse the enforcement of a foreign judgment "If the judgment debtor convinces the court that the judgment has not become final". Any foreign judgment which has not become final, binding, and enforceable under the law of the country of origin would not be enforced in Jordan.

Practice shows that the foreign judgment should be submitted as an original, or certified true copy, accompanied by a certificate issued by the foreign court stating that the decision is final and enforceable in the country of origin. The existence or availability of an appeal affects the finality of a foreign judgment, and the possibility that the Jordanian courts would stay enforcement of the judgment pending the outcome of the appeal to the foreign court is not the practice in Jordan. The court usually decides to reject the enforcement if it is satisfied that the judgment debtor has appealed, or if there is a possibility to do so. The burden of proving that the foreign judgment is not binding or enforceable lies with the respondent.

In *Abushehab v. Alsamhan* (Cass., civ., No1849/2019), the claimant sought to enforce a UK judgment. Both the Court of First Instance and the Court of Appeal were in favor of granting the exequatur for the judgment. The respondent appealed to the Court of Cassation. After examining Article 7(1)(h) the Court of Cassation considered that the judgment in question was not final and conclusive. The Court of Cassation held that: "[T]he respondent accompanied his demand with a letter from an English lawyer stating that he will submit an appeal before the English court on 25 April 2018, he also presented a summons sent by the Leeds court requiring the respondent to attend the hearing on 22 June 2018". The Court sent the case back to the Court of Appeal to examine these issues.

Similarly, in *Karadsha v.Aljallad* (Cass., civ., No 3197/2007), the claimant sought to enforce an arbitral award issued in Kuwait. The case record shows that the sole arbitrator held two sessions on 6 and 8 April 2002 and then he issued the award on 25 March 2006. Article 186 of the Kuwaiti law of civil procedure authorized the parties to consider an arbitrator's award as final and binding, and the same Article provided the grounds for setting aside an arbitration award, including time limits for issuing the award as agreed by the parties. The Court of Cassation found that the respondent had alleged, before the Court of Appeal, that he had filed an action before the Kuwaiti courts to challenge the arbitral award, and a hearing session was scheduled on 17 May 2007, meaning that the award was not final and binding. The Court of Cassation also found that the Court of Appeal, wrongly, did not order the respondent to bring official notes on these issues, which should be considered to be a fundamental requirement before deciding the case. The Court of Cassation, therefore, accepted the appeal. The Court of Cassation ruled that: "[I]t is therefore incumbent on the Court of Appeal to ensure that the respondent produces all necessary documents requested by the court before deciding the case".

In addition, a foreign judgment should be final and conclusive between parties at the time of initiating the enforcement request, and Jordanian courts do not consider the finality of such a judgment during the process of enforcement. This was what was decided in *Rami Daud v. Bashar Mulish*. (Cass., civ., No 3046/2016), This position was confirmed by the Court of Cassation regarding the enforcement of arbitral awards according to the definition of "foreign judgment" as set out in Article 2 of the 1952 Act: "The enforceable foreign judgment includes 'such an award which should be deemed enforceable as a court decision under the laws of the country in which it was rendered" (See also: Cass., civ., No 1376/2011). Therefore, the finality of an arbitral award, according to this text, is governed and should be exhausted by the law of the seat of arbitration.

This approach of favoring the seat of arbitration, acknowledging that the award is integrated into the national legal order of the seat of arbitration, leads to the conclusion that an arbitral award, according to the Jordanian approach, is not an international award, because the award's legal force stems from the law of the State where the arbitration took place. This approach dates back to the early days of international arbitration although, as stated by one of the leading commentators on international commercial arbitration, Professor Gaillard, "it would be mistaken to assume that it is no longer present in contemporary thinking" (Emmanuel Gaillard, 2010).

Meanwhile, under Article 3 of the New York Convention, a signatory state will accord to foreign arbitrations at least the same respect as it accords to domestic arbitrations. Before the Convention was adopted, a party to arbitration could

confirm that arbitration in a foreign country only if it first confirmed it in the country that was the seat of the arbitration.

Under the Jordanian Arbitration Act, an award becomes binding only after having been confirmed by the competent court. Therefore, according to the Jordanian approach, where the arbitration took place outside Jordan, the successful party should confirm the award by following the applicable procedures in the court which has proper jurisdiction in the seat of arbitration to make the foreign award an enforceable judgment in Jordan.

This approach was confirmed by the Court of Cassation in *Beplex Ltd v. Shaheen Business & Investment Group* (Cass., civ., No 2803/2000). In this case, the claimant sought to enforce an International Chamber of Commerce (ICC) arbitral award issued in Paris in 1998, but the Court of First Instance rejected the claim, and so did the Court of Appeal. The Court of Cassation considered many issues when deciding that: "[T]he 1952 Act has defined an enforceable foreign judgment in Jordan as: a judgment issued by a foreign court including arbitral awards issued by arbitrators regarding arbitral proceedings and such awards should be deemed enforceable as a court decision under the laws of the country in which they were issued". The Court considered that: "[A]rticle 5 of the New York Convention made it clear that: recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that the award has not yet become binding on the parties under the law under which that award was made". Then the Court held: "[S]ince Article 1477 of the French CPC stipulated that an arbitral award can only be enforced if the exequatur is granted by the *Tribunal de Grande Instance* in whose territory it was rendered, and since the award was not deposited before French courts for an exequatur, and since the claimant did not prove that the award was binding under the laws of the country in which it was issued, the appeal should be rejected". The Court of Cassation in this case did not consider whether Article 1477 applied to domestic arbitration in France. It's worth mentioning that Articles 2059 to 2061 of the French CPC provide the scope of arbitration under French law. The CCP draws a clear distinction between domestic (Articles 1442 et seq.) and international arbitration (Articles 1504 et seq.). Some of the provisions applicable to domestic arbitration also apply to international arbitration (Article 1506) (see: Derner, Daniel D., and Haydock, Roger, 1997).

When the Jordanian enforcing court rejects the motion for an exequatur, the question is whether the decision of the court acquires the nature of *res judicata*.

This question has been raised in the above case before the Court of First Instance of Amman when the successful party, after confirming the award from the French courts, introduced 2006 a new motion to enforce the French award in question. The Court of First Instance granted an exequatur to the award as a foreign judgment, considering that *res judicata* did not bar the action. The decision was confirmed by both the Court of Appeal and the Court of Cassation (Cass., civ., No 3673/2009). In this case, the Court of Cassation gave as the reason for its decision to grant the exequatur that: "[T]he New York Convention applies to this case. The interpretation of Article 3 of the Convention led to the conclusion that the national law applicable to recognition and enforcement is the 1952 Act and not the Arbitration Act".

The same reasoning was adopted in 1992 where the Court of Cassation, in *Across-East for Engineering and Construction Company v. Henry Boot Railway Engineering* (Cass., civ., No 768/1999), ruled that: "[G]ranting enforcement of the award rendered in Paris conducted under the auspices of the ICC Rules of Arbitration conforms with the 1952 Act and the New York Convention since the award was confirmed by the Paris court of the first instance according to Articles 1476 and 1477 of the French CPC".

Unlike many legal systems in the enforcement of such an award, the French Court of Cassation stated in *Hilmarton* (*Cour de cassation*, 1ère civ., 8 March 2006, cited by Emmanuel Gaillard, 2010) that: "[T]he award rendered in Switzerland is an international award which is not integrated into the legal system of the State, so that it remains in existence even if set aside and its recognition in France is not contrary to international public policy".

In Jordan, however, the conclusion would be that the recognition and enforcement of awards set aside in the State of the seat of arbitration would not be permitted in Jordan. The reason behind this approach may be that the arbitrators are considered as being comparable with a national judge in exercising their function within a single national legal order, namely that of the seat of arbitration.

The finality of the ICSID awards may provide a different approach. Article 54(1) of the ICSID Convention provides: "Each Contracting State shall recognize an award rendered according to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court of that State".

As the Convention considers that the award must be treated as final and binding without being subject to review by national courts, an award issued under the auspices of the ICSID in investment arbitration cannot be denied enforcement because of the vagaries of a State's substantive law, State immunity, or public policy (See: Michael Quilling,1981).

In general, most arbitral awards are subject to a process of confirmation. The legal practice in Jordan requires this confirmation to be before the national courts at the seat of arbitration and not in another jurisdiction. Unlike the case in other arbitration institutions, Article 54 of the Convention provides the framework for the enforcement of ICSID awards, thus ICSID awards can be enforced directly in any State that is a signatory to the Washington Convention of 1965. (See Ch. Dugan, D.Wallace, N.Rubins, and B.Sabahi, 2012). This is due to the juridical character of the award considered a national court judgment.

The Court of Cassation has made many decisions pertaining to the enforcement of ICSID awards issued from other arbitral institutions and subject to an exequatur pursuant to the requirements of the 1952 Act.

In *Saba Fakes v. the Republic of Turkey* (Cass. civ., No 233/2016), the dispute involved the alleged breaches by the Republic of Turkey(Respondent) of a number of the standards of the Netherlands-Turkey Bilateral Investment Treaty (BIT), including the respondent's alleged failure to ensure to the claimant fair and equitable treatment and the alleged expropriation of the claimant's investment in *Telsim Mobil Telekomunikayson Hizmetleri A.S.* ("*Telsim*"), a leading Turkish telecommunications company put into receivership and subsequently sold to a third party by the Turkish authorities. The claimant (Saba Fakes) filed the request for arbitration based on the ICSID Convention and the Agreement on Reciprocal Encouragement and Protection of Investments between the Kingdom of the Netherlands and the Republic of Turkey dated 27 March 1986. In this case, the ICSID arbitral tribunal declared that the Centre and the arbitral tribunal did not have jurisdiction over the dispute; and then the Tribunal declared that the claimant must bear in full his legal costs and expenses, the costs of the arbitration, as well as the respondent's legal costs and expenses. Finally, the arbitral tribunal ordered the claimant to pay the respondent 182,500.00 USD corresponding to the respondent's share of the costs of the arbitration, as well as 1,496,248.49USD, representing the respondent's legal costs and expenses.

The Republic of Turkey sought to enforce the award before the Jordanian courts filling a motion as a claimant. The respondent (Saba Fakes) replied by challenging the award, submitting a motion asking for the award to be nullified, but the Court of First Instance dismissed this motion and granted at the same time an exequatur which was confirmed by the Court of Appeal. The respondent then filed an appeal before the Court of Cassation. The Court of Cassation confirmed the recognition and enforcement of the award in ruling that "[S]ince the award was confirmed by the ICSID center which provides that the ICSID award is final and binding, and the award was not subject to any review according to the Convention's system, the appeal is dismissed". The Court of Cassation asserted that, in the process of recognition and enforcement, the court's task was limited to verifying the authenticity of the ICSID awards and it was not an opportunity for review.

This case is a very useful example of the enforceability of international arbitral awards, because the recognition and enforcement of an award may be sought in any State party to the ICSID Convention, not just in the State party to the arbitration proceedings or the State of the nationality of the investor who was a party to the proceedings. Moreover, what this case also reflects is that the confirmation process before the Centre was sufficient to be considered as establishing the finality of the ICSID award. This is in contrast to non-ICSID awards, including Additional Facility awards, which may be reviewed under domestic law and applicable treaties on the occasion of their recognition and enforcement.

Finally, in *Anytime Import & Export LTD, CO v. Lee Biscuits Pte Ltd (Singapore)* (Cass., civ., No 274/2019), Lee Biscuits (the claimant) sought to enforce against Anytime (the Jordanian company) an award rendered in Singapore under the auspices of the Singapore International Arbitration Centre (SIAC) rules. The Court of Cassation was satisfied that the award was binding and final according to the attestation of the SIAC issued in light of Article 19 (c) of the Singapore Law

on International Arbitration, and the authentication of the award by the Notary Public in Singapore.

As the record shows, the respondent did not raise the matter that the award was not confirmed by the courts in the seat of arbitration. Moreover, the Court of Cassation continued to use the cumulative approach as before. The Court ruled that: "[I]n order to decide this motion, it is essential to examine the requirements set out in Article 7 of the 1952 Act, and the dispositions of Articles 2, 3 and 4 of the New York Convention. The respondent has not proved any grounds which would entitle the court to deny the granting of the exequatur".

4.3.6 When the relevant subject matter conflicts with Jordanian public policy

Generally, the notion of public policy permits the enforcing court to measure the effects of the enforcement of such a foreign judgment following the principles that are essential for the political, economic, moral, and cultural order of Jordan. The Riyadh Convention provides that a State may refuse to enforce a judgment if it is contrary to the public policy of that State (Article 30. A). The New York Convention makes the same provision (Article V.2). However, public policy is not defined precisely. The Convention left the contracting States to define the scope of public policy in their domestic legislation.

The wording of Article 7(1)(e) of the 1952 Act provides that the foreign judgment might be unenforceable when the cause of the action is not able to be settled or heard before the Jordanian courts if the action was brought before them because it violates public policy and morals in Jordan.

It appears, according to the wording of this Article, that the essential standard of assessing public policy is subordinate to judicial admissibility of the subject matter in Jordan. That means that courts must consider the actual consequences of enforceability of the foreign judgment by looking at the cause of the action to decide whether it is subjectively admissible for the case to be brought before the Jordanian courts or not. In this regard, certain matters are subject to the exclusive jurisdiction of the Jordanian courts, such as disputes concerning commercial agencies operating in Jordan for registered commercial agents (A. Aldmour, 2020) (See *e.g.*: Cass., civ., No. 3288/2017; Cass., civ., No 4164/2018).

This leads to the consideration that such a notion of public policy, as contained in the current text, is a narrow one because the inadmissibility of such an action is exceptional under Jordanian law.

According to this point of view, since the enforcing court must examine the requirements set out in Article 7(1) of the 1952 Act, the scope of public policy will not come into play where the application of the foreign law would be an offense to an interest considered as one that must be protected by Jordanian law.

Moreover, in most of the cases before the Court of Cassation which has been examined here, it was not the court's obligation to invoke raising the notion of public policy *ex officio*; the party resisting recognition and enforcement bears the initial burden of proof in challenging the judgment in an attempt to avoid the granting of an exequatur. On the other hand, the courts have no jurisdiction to review foreign judgments on the merits in terms of their compliance with Jordanian laws and regulations.

Despite this fact, the examination of some cases brought before the Jordanian Court of Cassation shows that some members of the Court were apt to disagree with this approach relating to the courts' duty to raise the effects of public policy when the foreign judgment contravened Jordanian public order, particularly in issues related to interest and compound interest.

In *Petra International Banking Corporation (PIBC) v. M.Alebini* (Cass., civ., No 2733/2010), the claimant (PIBC) sought enforcement of a USA judgment of 8,256,971USD against the respondent rendered in 1999 by the San Diego Superior Court. The enforcement in Jordan was made because PIBC was a United States-based subsidiary of Petra Bank (a Jordanian bank) which owned 70% of its capital, and Electronics of North America (ENA) secured a loan from PIBC for which the respondent personally guaranteed payment. The respondent asserted that the judgment violated Jordanian public policy on the basis that the main loan was only 500,000 USD (which increased later to 2,500,000 USD) and therefore the judgment included fines and interest which were not allowed according to Jordanian law. The Court of First Instance of Amman in 2002 rejected the motion on the ground that the claimant had failed to prove that the judgment was final and conclusive, or that the judgment contained the payment of fines and interest which violated the Jordanian public policy.

The Court of Appeal endorsed the decision, but on the basis that the motion was wrongly submitted before the Court of First Instance as it had been submitted by a lawyer who was not qualified to appear before that court.

Before the Court of Cassation, the claimant pleaded that its representation by counsel was duly valid, thus the Court of Cassation accepted the appeal and sent the case back to the Court of Appeal. The Court of Appeal re-examined the case, then issued its decision confirming the decision of the Court of First Instance on the merits. The claimant then appealed this decision before the Court of Cassation. The Court of Cassation considered that the sum of the claims was divided as follows: (1) 1,688,220 USD represented damages for negligent misrepresentation; (2) 3,240.751 USD was for breach of the loan contract and interest including the legal costs, and the total of the interest did not exceed the main loan; (3) 1,328'000 USD was for violating the Uniform Fraudulent Transfer Act (the "UFTA"); (4) 2,000,000 was for fraud and conspiracy upon the claimant.

The Court of Cassation confirmed that all compensation for damages was following US rules and Jordanian courts, in the process of enforcement of foreign judgments, are not allowed to review the subject matter of the underlying judgment. The Court added that "[N]o evidence has been submitted proving that the judgment in hand violates Jordanian public policy or that the contested claims are not allowed before the Jordanian courts".

Before the Court of Cassation in the first appeal, one of the dissenting judges stressed that the foreign judgment violated Jordanian public order since the amount claimed exceeded the main loan, in violation of public policy, and the other damages claimed, on compound interest, negligent misrepresentation, fraud, and violation of the UFTA were not allowed under Jordanian laws and regulations.

It is worth mentioning that the Court of Cassation, after examining the Jordanian Central Bank document submitted in this specific case, asserted that the sum of interest on the main loan did not exceed the main loan, which leads to the conclusion that compound interest included in foreign judgments may not be enforced in Jordan even though this kind of interest is permitted under Jordanian commercial law and some practice (See for example Article 113 of the Jordanian Commercial Code relating to current accounts).

In this regard, courts may make extensive use of their competence to review a foreign judgment on its compliance with Jordanian public order and will consider the fundamental principles of Islamic law to be part of Jordanian public policy, particularly in all subject matters related to personal status, since the Law of Execution before the Shari'a courts stipulated this expressly (Article12.1 of the Law of Execution before the Sharia Courts).

Before the civil courts, many concerns related to Islamic law may arise in the course of enforcement, particularly in cases related to interest. In fact, unlike commercial transactions, a contractual obligation to pay interest on a loan in civil transactions is void under Article 636 of the Civil Code. In commercial transactions courts apply the provisions of Ottoman law (*Nedam Almourabah)* when reviewing such commercial agreements, setting the interest at 9%. However, in the banking sector and the Specialized Credit Institutions (lending institutions) which are a part of the Islamic Bank, the law of the Central Bank and its regulations applied to commercial banks and Central Bank-controlled financial institutions do not comply with the provisions of Ottoman law. This means that interest may exceed the rate of 9% according to the Central Bank regulations and the competition in the markets (Article 43 of the Central Bank Law No 19 of 1979).

Moratory interest may be charged in civil and commercial transactions pursuant to Article (167) of the Code of Civil Procedure. Moreover, consequential damages, such as loss of profit, are not recoverable under contractual liability as a general rule,[1] but only under tort liability (A.Aldmour, 2020).

Nonetheless, in *Seven Seas Shipping Co v. White Whale Shipping LTD*,(Cass., civ., No 6774/2018), the claimant (White Whale) sought to enforce an arbitral award rendered in London. The Jordanian company (Seven Seas) challenged

[1] According to Article 14 of the Law of Commercial Agents and Intermediaries No 29 of 2001, the agent is entitled to compensation by the principal not only for actual damages suffered but also for loss of future profit caused by the principal's cancellation of the agency contract prior to the expiry of its term without breach by the agent or for any illegal reason. In contractual liability the loss of profit is recoverable in the event of gross negligence or fraud.

the decision of the Court of Appeal which confirmed the decision of the Court of First Instance granting the exequatur. Before the Court of Appeal, the Jordanian company claimed that the award partially contravened public policy on the ground that the award contained the right to impose compound interest. The Court of Cassation did not consider this argument in deciding that the scope of the public policy ground to deny recognition should be interpreted following the main claim in the lawsuit and not with what foreign forums could order in support of the main claim, like ordering interest or legal compensation.

Similarly, in *T.Hamaydah v. W.Suliman,* the Court of Cassation considered that interest was governed by the law of the rendering court in the USA.(See also Cass., civ., No 5433/2019)

Jordanian case law provided that the party seeking to challenge the enforcement of a foreign judgment should prove that the judgment violated Jordanian public policy. The question arises, however, under what rules and regulations should a decision be made concerning such a violation?

A controversial judgment was made by the Court of Cassation in *B.S.Freyha v. O.Ayesh*(Cass., civ.,1686/2013) where the Court of Cassation had argued that the UAE money judgment rendered by the Court of Abu Dhabi contravened Jordanian public policy on the ground that the subject matter did not comply with the provisions of Jordanian law on real property (immovable property) despite the argument raised by the claimant before the Court of Appeal and before the Court of Cassation that the subject matter was governed by UAE laws.

In this case, the claimant sought enforcement of a UAE judgment ordering the respondent to pay 12,500,000,000 UAED to the claimant based on a pre-sale agreement of real estate located in Abu Dhabi (UAE). Both the Court of First Instance and the Amman Court of Appeal refused the claimant's request, and so the claimant appealed to the Court of Cassation which also refused to enforce the judgment. In support of its judgment, the Court of Cassation cited Article 7(1)(e) of the 1952 Act, and Article 19 of the Jordanian UAE Bilateral Treaty on judicial cooperation, establishing that the courts of the State requested to recognize or execute a judgment is to be bound by the facts stated in that judgment. A judgment will not be recognized or enforced in the following cases: "If a judgment or its cause of action is contrary to the constitutional rules or the principles of public order and morality in the requested State". Then the Court of Cassation referred to the Jordanian legal provisions on real property which state that any pre-sale agreement of sale or legal disposition in real property is void unless it is registered on the Property Register.

The reasoning of the Court of Cassation, with respect, was surprising since the Court examined this foreign judgment, which it stated to be final and binding according to the law of the country of origin, without any authority to re-examine or to test it according to the Jordanian laws on real property. Paradoxically, however, concerning the ground for the appeal, the Court of Cassation did examine the finality and enforceability of the foreign judgment in its country of origin in light of Jordanian substantive laws.

What is surprising is that, in Jordan, all legal provisions of the consequences of contracts considered to be null and void are applied *de facto* to return the contracting parties to their *status* before contracting. That means when a contractor pays any sum of money under a null and void contract, the payment should be reimbursed, therefore enforcement of such a judgment in this regard could never violate Jordanian public policy, especially when the following question is asked: what would the outcome be if a similar case was brought before the Jordanian courts? There is no doubt that the creditor is entitled to be reimbursed what he had paid under a contract considered to be null and void.

Moreover, in this case, the court maintained its position in applying the cumulative approach by applying, in parallel, the 1952 Act and the Bilateral Treaty between Jordan and UAE even though the international Convention prevails over national law. This cumulative approach may create some contradictions because the Treaty emphasized the finality of the judgment and established the grounds permitting the denial of recognition and enforcement of foreign judgments, including the public policy requirement, without any reference to the admissibility of such an action.

Finally, the notion of public policy appears to be wide enough to encompass all mandatory rules in the applicable Jordanian laws or regulations. As such, any provision of a contract that contradicts a mandatory Jordanian law will be contrary to public policy and null and void. Nonetheless, despite the use of the cumulative approach of applying both the

Conventions and the 1952 Act, which led to the examination of the enforceability of certain foreign judgments and arbitral awards in many cases in light of the 1952 Act, both the raising of the question whether the public policy was contravened and the proof of it, were pragmatically conferred on the respondent in every case.

4.4 *Reciprocal recognition and enforcement of foreign judgments in Jordan*

Reciprocity is required under the 1952 Act. Article 7(2) provides that the court may refuse to grant the enforcement of a foreign judgment if the law in the rendering country would not enforce comparable judgments from Jordanian courts.

Although the wording of the text (i.e. if the "Law" in the rendering country may lead to the conclusion that reciprocity is considered a question of law and not a question of fact), the practice and the jurisprudence of the Court of Cassation show that reciprocity is a question of fact subject to general rules on proof and evidence. In other words, the contesting party (judgment debtor) has the duty of raising and proving the lack of reciprocity as a requirement of challenging the process of enforcement. In my opinion, the respondent would be advised to raise reciprocity before the Court of First Instance.

In most of the examined cases, the Court of Cassation did not investigate the matter of reciprocity even though it was raised by the respondents. The practice shows therefore that reciprocity has not been an essential precondition to enforcing a foreign judgment, and every time the question of reciprocity was raised, the courts dealt with this issue by establishing that the respondent did not prove that the rendering country would not enforce comparable judgments issued by Jordanian courts.

Moreover, in *M.S.Qunwaty v. Kubers Inc& Kaberand Co* (Cass., civ., No:2549/1999), the Court of Cassation considered, on a discretionary basis, that reciprocity is not required. The Court stated: "[A]rticle 7(2) did not entitle the Court of First Instance to refuse the enforcement of a foreign ruling on the ground that the law of the country (Cyprus) in which the judgment was issued does not allow the enforcement of Jordanian judgments by its courts, but it left this matter to the court to decide according to its discretional authority on a case-by-case approach".

In *Alsahalwy v.Alrobihatte* (Cass., civ., No:6521/2018), the Court of Cassation claimed that the presumption of reciprocity is always in favor of the claimant, without establishing any reciprocity analysis test or offering further guidance. The Court ruled that: "[B]y looking at the legal provisions provided in Article 7 of 1952 Act, it appears that the main rule of the enforcing court is to grant the enforcement of foreign judgments, and non-enforcement is the exception".

In *Aleysa v. ARMB LTD* (Cass., civ., No. 6521/2018), the case was related to the enforcement of an English judgment. The Court of Cassation held that: "[A]rticle 7(2) of the 1952 Act provides that the burden of proof that the law in the rendering country would not enforce comparable judgments from Jordanian courts is placed on the judgment debtor. In addition, alleging the non-existence of a Bilateral Agreement on judicial cooperation between Jordan and the United Kingdom does not constitute proof that the UK does not enforce Jordanian judgments".

Although this approach increases the number of judgments that are eligible for enforcement in Jordan, neither the 1952 Act nor case law indicates what standard or burden of proof is to be used to decide such matters, which is somewhat problematic.

Unlike proving and pleading foreign law in international litigation as a question of law under Jordanian Private Law, the treatment of foreign law in the course of enforcement as a fact reveals many problems and concerns for the disputing parties, but mainly the respondent. The reason behind such concerns is the fact that proving non-reciprocity according to foreign law is sometimes linked to political considerations, leading the party resisting enforcement to abandon this defense. In addition, establishing non-reciprocity according to foreign law, as provided in Article 7(2), could not be conducted under many conventional rules on evidence and proof applied in domestic litigation. It could not be proved by testimony or oath, for example. In my opinion, proving non-reciprocity can be done through the production of an authenticated copy of the statute or decree of general applicability; expert testimony subject to cross-examination, despite the maxim *Iura novit curia*, under the Jordanian legal system; or current decisions of courts of last resort.

When deciding regarding reciprocity, however, one could argue whether it is possible to challenge enforcement of the foreign judgment when the courts in the rendering country reject the enforcement of Jordanian judgments on the ground of

public policy. Most countries have their concept of public policy according to their private international law to preclude the application of foreign law or to prevent the enforcement of foreign judgments.

In this regard, no corresponding decisions of Jordanian courts are available to date. Nonetheless, I believe that the respondent may challenge the enforcement of such a foreign judgment if the subject matter of the judgment in question would be unenforceable abroad if a similar judgment were to be rendered by a Jordanian court.

In regard to foreign arbitral awards, in *Employers Insurance Company of Wausau &American Marine Inc v. Arabian Seas Insurance Com* (Cass., civ., No 4211/2004), the claimants sought to enforce an arbitral award issued in Florida and confirmed, according to due process, in the federal court in Florida. The Arabian insurance company raised the question of reciprocity as a ground to reject enforcement before the Jordanian courts. The Court of Cassation asserted that reciprocity is not a necessary condition for enforcing an arbitral award since Jordan had ratified the New York Convention, without reservation, including the reciprocity clause. Paradoxically, however, the Court then stated that: "[S]ince the award was confirmed by the national courts in the situs of arbitration, the 1952 Act is the law applicable to recognition and enforcement".

Similarly, in *Across- East for Engineering and Construction Company v. Henry Boot Railway Engineering* (Cass., civ., No 768/1991 (6 February 1992), the Court of Cassation ruled that: "[J]ordan ratified the New York Convention without any reservation related to reciprocity, thus the application of this Convention is permissible".

4.5 ***The new amendments to the Arbitration Law in 2018 and the enforcement of foreign arbitral awards***

One can argue that foreign parties might avoid some difficulties associated with the recognition and enforcement of foreign judgments by submitting their disputes to arbitration. This chosen may avoid any potential challenges associated with the enforcement of foreign judgments, particularly when Jordanian parties will often not have their place of residence or business in the country of origin, as specified in the second ground for denying recognition and enforcement in the 1952 Act. Nonetheless, this choice may represent some concerns in the Jordanian legal system, because the recognition and enforcement of foreign arbitral awards are governed mainly by the 1952 Act and subject to divergent interpretations of the New York Convention.

The Jordanian Arbitration Law No 16 of 2001 was amended in 2018 and many changes were introduced. Before the enactment of the current amendments, the scope of application of the Act was to all arbitration conducted in Jordan, and the competent court to challenge or appeal the award was the Court of Appeal. The scope of application of the current arbitration Act of 2001 has been modified in 2018 and is now set out in Article 3. The Court of Cassation now has exclusive jurisdiction over the nullity of arbitral awards rendered following this Act, and the same Court also has jurisdiction to grant leave to enforce the awards.

An award is usually enforced by way of summary procedure under Articles 52 and 53 of the Arbitration Act. hence, an arbitral award conducted in Jordan and rendered following the arbitration Act is deemed to have the authority of *res judicata* and is enforceable by complying with the provisions of this Act. The application for enforcing the arbitral award cannot be accepted unless the period given to the action for nullity has expired. An application for enforcement must be submitted to the Court of Cassation and accompanied by a copy of the arbitration agreement, the original award or a signed copy thereof, and an Arabic translation of the arbitral award authenticated by an accredited authority if the award was not issued in Arabic. Article 54 of the Arbitration Act also provides that the Court of Cassation must review the application for enforcement without a hearing, and must order its execution unless the Court finds that the award includes a violation of public policy in Jordan. My main question in this regard is: Could the new dispositions of this Act be used to enforce an award according to this Act where the seat of the arbitration was outside Jordan?

It is usual for any challenge to an award to be conducted in the courts of the seat of arbitration. However, according to the new provisions of the Arbitration Act, as amended in 2018, the application of the current Act may be established on the following two grounds.

(1) If Jordan was the seat of arbitration, challenging and enforcement of such award will be governed by the 2001 as amended in 2018 Act as it was previously, even in the case where the disputing parties had chosen to follow any

international institutional arbitration rules. This is due to the fact that the award is to be considered as a Jordanian award, and therefore it will be subject to the Arbitration Act.

In *Total v. International Overseas Trading Est & Others*(Cass., civ., No 242/2019), the parties agreed to submit their dispute to the sole arbitrator by referring to the ICC rules and Jordan was the seat of arbitration. The applicable law governing the agreement was Jordanian. *Total* challenged the award before the Jordanian courts, seeking to set it aside. The respondents raised the argument that the award was an ICC award and should not be governed by the Jordanian Arbitration Act. The Court of Cassation rejected this argument in ruling that: "[S]ince the arbitration took place and was conducted in Jordan, the Arbitration Act is the applicable law to the annulment of the award".

(2) If the parties agreed to choose contractually Jordan as seat of arbitration, and the Arbitration Act of 2001, as amended in 2018, as the law applicable to their arbitration conducted outside Jordan, such a clear intention, in my opinion, might have an impact on the arbitration process, particularly to the challenge or appeal, and it might have an impact on the recognition and enforcement process. This means that the new provisions may prevent the use of the 1952 Act.

Article 2 of the Arbitration Act provides that: the "Seat of Arbitration" is "the country agreed upon by the parties to the arbitration to be the seat of the arbitral proceedings, the country whose applicable arbitration law is agreed upon by the parties to apply to the arbitral proceedings or the country selected by the arbitral tribunal as its seat in the absence of an agreement." It is important to point out that identification of the seat of arbitration (as opposed to the location where hearings are to take place, which is often referred to as the venue of arbitration) is one of the most important features of an arbitration clause (Laura Warren, 2011).

Article 3 of the Arbitration Act provides that: "with due regard to the provisions of the international treaties in force in Jordan, the provisions of this law shall apply to every conventional arbitration conducted in Jordan, and to every arbitration in which the parties agree to be governed by this Act, and it relates to civil or commercial disputes between parties of public or private law persons, whatever the legal relationship with which the dispute is connected, whether contractual or not".

Before the amendment of the old text of the current Act (the 2001 Act), the provisions of the Jordanian Arbitration Act were territorial and confined to governing only those arbitrations which were conducted in Jordan. This was confirmed by many Jordanian cases as I've mentioned (See *e.g*. Cass., civ., No 4186/2005).

My main point is: if the parties to the arbitration have agreed that Jordan is a seat of arbitration, and the Arbitration Act was amended in 2018 Act to govern their dispute where the arbitration was conducted outside Jordan, would that affect the confirmation, setting aside, and on the recognition and enforcement of the award?

Taking into consideration that the Jordanian Arbitration Act has no definition or conception of the international nature of arbitration, one can argue that where the venue of arbitration was outside Jordan and the parties to arbitration have chosen the Jordanian Arbitration Act as the law applicable to their arbitration and agreed in clear terms that Jordan is the legal seat of arbitration, this might modify the Jordanian past approach and turn such an international award into a national one even it was conducted and issued outside Jordan.

This theory might therefore alter the legal provisions on the recognition and enforcement of foreign awards set out in the Act of 1952 and the provisions of the international Conventions including the New York Convention since, in my opinion, the contractual nature of international arbitration is widely recognized. Besides, one can argue that the principle of free disposition, recognized in private international law (A. Aldmour, 2019), may hinder the supremacy principle of international instruments over domestic legal provisions.

On the other hand, the law under which the award was made may be different from the law of the place where the award was made. Under the New York Convention, there is no definition of the phrase "Law under which the award was made", thus there are possibly two laws that may both be considered to be "the law under which the award was made". The first is the procedural law chosen by the party, and the second is the law of the arbitration agreement (Andrew and Keren Tweeddale, 2005).

The drafters of the new amendment of the Arbitration Act may have been aware, in some respects, of the questions on

the interpretation of the provisions of the new Act by considering, as the new Article 3 of the Act provides: "The international rules and principles apply to international arbitration and the international commercial customs". However, this could not resolve all issues.

In addition, the fact that many scholars consider that the award does not derive its legal effect from the seat of arbitration, and, even if it is annulled in another country, it could still be enforced under the New York Convention (A & K.Tweeddale, 2005), that would not resolve many of the controversial issues on interpretation. A system of uniform rules and principles applying to international arbitration has still not been achieved; this is due to the divergence between the leading legal systems around the globe.

According to the new amendments of the Arbitration Act, I think that it is possible for other courts which are also courts of the venue where the award was issued to claim a concurrent jurisdiction. According to the new version of Articles, 2 and 3, the Jordanian courts and the court of the venue might both consider themselves to be simultaneously competent to challenge the award or enforce (confirm) the award after it has been made. Hence a situation of parallel proceedings might arise as one of the parties chooses to initiate concurrent advantageous proceedings.

Let us suppose that the parties agreed that London was the venue of their arbitration, and they have chosen Jordan, as provided in article 2, the seat of arbitration and the Jordanian Arbitration Act as the procedural law for their arbitration, and the arbitration has some further connection with Jordan, for example, Jordanian law is the applicable law to the arbitration agreement or Jordanian law was the applicable law on the merits. The unsuccessful party would therefore have the right to challenge the award under any mandatory provisions at the seat of arbitration according to the procedural laws agreed upon by the parties, i.e. before the Jordanian Court of Cassation since Jordan was chosen as the seat of arbitration.

In *India v. McDonnell Douglas Corporation* (2 Lloyd's Rep 48, 50,1993), the English courts stated that: "[E]nglish law does admit of at least the theoretical possibility that the parties are free to choose to hold their arbitration in one country but subject to the procedural laws of another".

In *Atlas Power v National Transmission* (which 1052 (Comm),2018, David Hesse, 2018), Mr. Justice Phillips heard an application in the Commercial Court for a final anti-suit injunction to restrain the defendant from challenging a Partial Final Award made in an LCIA arbitration. In ordering the final injunction, Mr. Justice Phillips confirmed that the seat of the arbitration in question was London and this entitled the claimant to permanently restrain the defendant from challenging the Final Partial Award in Lahore, Pakistan, or anywhere other than England & Wales.

By choosing Jordan as a seat of arbitration, and the Jordanian Arbitration Act as *lex arbitri*, the parties intended that proceedings on the award should only be those permitted by Jordanian law. Thus the successful party, instead of seeking to enforce the award against the defendant under the New York Convention, may confirm the award before the Jordanian Court of Cassation and consider it as a Jordanian judgment. In this case, the legal provisions of recognition and enforcement of foreign judgments, including arbitral awards, set out in the 1952 Act will not come into play.

Therefore, to remove all doubt or unpredictability, clear drafting of the arbitration agreement is essential. We can only await clarity from new interpretations of many legal provisions, including the New York Convention, which may be set out by Jordanian courts regarding the law applicable to recognition and enforcement, protection, equity, and jurisdiction.

Finally, the Court of Cassation might interpret the provisions of Article 3 of the New York Convention by establishing that Article 3 of the Convention provides that "each Contracting State shall recognize arbitral awards as binding and enforce them following the rules of procedure of the territory where the award is relied upon. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards".

The Jordanian Court of Cassation might consider that the 1952 Act imposes more onerous conditions and imposes higher fees on the parties than the Arbitration Act since the Arbitration Act contains procedural dispositions to enforce arbitral awards, and only the dispositions set out in Article 5 of the Convention could prevent recognition and enforcement.

In this regard, a recent judgment rendered by the Egyptian Court of Cassation in December 2019, *Cylinders Mills-Z. Kaliub v. SOLARIS Commodities S.A*, Egyptian Cass., civ., No 7348/89), considered that the award rendered in London

under the auspices of the Grain and Feed Trade Association (GAFTA) rules is enforceable in Egypt and the President of the Court of Appeal in Cairo has jurisdiction to confirm the award (as provided by the Egyptian Arbitration Act which applies to domestic arbitration) even though the parties had not chosen the Egyptian Arbitration Act as the law applicable to their arbitration. To prevent the application of the provisions set out in the Egyptian Code of Civil Procedures on the recognition and enforcement of foreign judgments and awards, and in light of Article 3 of the New York Convention, the Egyptian Court of Cassation considered that the Egyptian Arbitration Act is procedural (notably Articles 9, 56 and 58) applicable to the recognition and enforcement of the awards since this Act is less onerous than the Egyptian Code of Civil Procedures.

Conclusion

The preceding analysis shows the legal system in Jordan requires an exequatur be obtained before enforcement of a foreign judgment ordered. Jordanian courts routinely enforce foreign judgments, and courts are increasingly willing to grant similar recognition and enforcement to foreign arbitral awards. However, as this article has tried to show, the Jordanian case law on the recognition and enforcement of foreign judgments, including arbitral awards, is sometimes creating an unclear, lengthy, and unpredictable approach. The basic system of the Jordanian enforcing system is that a foreign judgment including the award, will not be recognized if it is not certified to be final and conclusive, or if it does not fulfill the conditions provided under each subparagraph of Article 7 of the 1952 Act. This confirmation procedure, for example, is an onerous condition for the winning party to the arbitration, as provided in Article 3 of the 1958 New York Convention. This is because most foreign judgments and awards are considered under the same legal provisions, mainly the 'old' 1952 Act. The application of International Conventions, in particular the 1958 New York Convention, and the UNCITRAL Model Law is still not widely used by the Jordanian courts despite the supremacy of international Conventions over domestic law, as established under the Jordanian legal system.

The Jordanian enforcement system should harmonize and standardize its rules to offer a more comprehensive approach to recognition and enforcement of foreign judgments and awards than exists. I recommend that such provisions be integrated under a single regulation to encourage the courts to anticipate several issues that are becoming increasingly significant in a globalized environment. Thus, the need for a "Private International Code" could be a suitable solution. Moreover, in light of the international treaty law and international practice, it seems important to create an arbitration culture to make sure enforcement of international awards and arbitrator-ordered interim measures.

Case law serves multiple functions within the Jordanian legal system including the interpretation of the rules of law, and the substitution function in situations where the law is silent, obscure, or insufficient to address the circumstances of a specific case. Accordingly, the role of Case law should be encouraged to meet all the required needs and to reflect the best global litigation and arbitration practices.

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