



# FOREIGN JUDICIAL JUDGMENT BETWEEN MONITORING AND AUDITING SYSTEMS IN THE CONTEXT OF JORDAN

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**Abstract** .Confession in a foreign judicial judgment in front of the national judiciary can only be done through one of two systems, the regulation of filing a new lawsuit, this regulation does not recognize the judgment rendered by foreign country, unless a new lawsuit has been instituted for claim that stipulated the foreign judgment, and the regulation of execution order, by monitoring the foreign rule to be recognized, by verifying that certain conditions provided by national law in the foreign rule to be recognized, the way of review is to review foreign judgment objectively, by reviewing of the judgment whether the foreign judge has properly applied the legal rule to the dispute, Some countries do not recognize the foreign rule unless there is an international agreement to do so. The problem of the study revolves around the extent of the control of the national judiciary on the foreign right judicial judgment to be recognized before the national judiciary. The researchers used the descriptive analytical approach and the comparative approach as necessary, the researchers found a set of results and recommendations: There are two regulations for recognizing foreign rule: a new lawsuit and an enforcement order. The most important recommendations are to recognize foreign judgments unconditionally and to those affected by that objection, whether by questioning before the Execution Department or establishing a lawsuit before the competent court

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## INTRODUCTION

Judicial rulings issued by national courts are subject to judicial control, the question then arises whether the judicial judgment issued by foreign courts is subject to the control of the national judiciary upon request for recognition, and therefore can we invoke before the national judiciary not to recognize these judgments?

### The importance of this study

The importance of this study is that the position of states on the recognition of foreign rule is different, some do not permit the recognition and acceptance of matters adjudicated by a foreign judiciary before national jurisdiction if there is no international convention, Others require monitoring or reviewing the foreign judgment towards the Jordanian Foreign Execution Law No. 8 of 1952 and the Egyptian Civil and Commercial Procedure Law No. 13 of 1986 and its amendments.

### The study Problem

The problem of this research focus in the extent to which the judicial judgment issued by foreign courts if it is recognized before the national judiciary.

We find ourselves wondering what foreign legal judgment should be recognized. Does the national judiciary accept the judicial judgment issued by foreign courts without supervision or review? Are these foreign judgments recognized as soon as they are issued, or should certain conditions be required by national law?

### Objectives of the study

The study of the subject of foreign judicial judgment between the monitoring and auditing systems aims at monitoring the national judiciary on foreign judicial judgment to a number of objectives, the most important of which are: to Indicate what foreign legal judgment

should be recognized, and to indicate the regulations used to recognize by the foreign judicial ruling and whether it is recognized as soon as it is issued or whether certain conditions stipulated by national law must be met.

## METHODOLOGY OF THE STUDY

Due to there is no specialized study on the subject of this study, this research will be based on legislative texts, jurisprudential opinions, and judicial decisions, Therefore, the analytical and comparative approach will be followed in the study of the foreign judicial judgment between the two monitoring and auditing systems based on certain laws such as the Jordanian, Egyptian, Iraqi and French laws whenever necessary to show the advantage of all the laws or to indicate any shortage thereof.

The researchers will be guided in all this by the jurisprudence, especially the jurisprudence of the Jordanian Court of Cassation, and the jurisprudence of some courts in Arab countries, especially the jurisprudence of the Egyptian Court of Cassation, whenever possible.

### The first chapter

#### What is a foreign judicial judgment?

The courts shall issue a number of judgments, including: before deciding the case, and during the hearing of the case, the courts issue these judgments either in their judicial, administrative or state jurisdiction, and judicial decisions, like rights, administrative or penal, judicial judgment is our area of research, Consequently, the concept of judicial judgment and foreign judicial judgments must be defined and will be addressed through the following two requirements:

### The first topic

#### Definition of judicial judgment

The Jurisprudence, legislation, and the judiciary have defined the judicial judgment as (it issues from independent entity to settle disputes arising between the parties)<sup>1</sup>

The judgment is defined in a large sense: (Every decision of the court adjudicated in a particular dispute, whether during the litigation or to put an end to it. All decisions issued by the court prior to its final judgment shall be called a judgment according to the large meaning of the judgment)<sup>2 4</sup>

The legislation has been defined by Iraqi law as: (irrevocable decision of a case issued by a court formed legally in offered dispute in accordance with the Code of Civil Procedure)<sup>3</sup> As for the judiciary, the jurisprudence of the Jordanian Administrative Court considered that the judgment is judicial in two cases.

The first: it should be issued by a court pursuant to its judicial function, to be decided on the basis of a legal rule, between two adversaries relating to a special or public legal status, it does not create a new legal center but decides in the force of legal truth whether existing right or not. The second: it should be issued from a party not consisting of judicial elements, but was assigned an exceptional judicial power provided that the elements of judicial litigation described in the first case or that the will of the legislator is clear in considering a judicial decision.<sup>4</sup>

After careful study of the concept of judicial judgment, the two researchers thought of a more precise and comprehensive definition of judicial judgment as: (Judgment issued by a court constituted by law in a case is brought before it in accordance with the law and principles , whether the judgment is rendered in all or part of the original litigants' demands or in a subordinate demand of the original demands)

### The Second topic:

#### What is a foreign legal judicial judgment?

Foreign Judicial Judgment Between Monitoring And Auditing Systems In The Context Of Jordan

The Jordanian law defines a foreign judicial judgment in Article 2 of the Jordanian Foreign Execution Law as <sup>(57)</sup> : (each judgment issued by a court outside the Hashemite Kingdom of Jordan (including religious courts) relates to rights proceedings and requires payment of a sum of money or a movable property or a reckoning, The decision of the arbitrators in the arbitral proceedings shall include if such decision has been rendered by virtue of the law applicable in the country where the arbitration was rendered as enforceable as a decision of the court in the said country)

The Iraqi law defined it in Article 1 of the Law on the Execution of Foreign Judgments as: (a judgment issued by a court outside Iraq)<sup>6</sup>

Jurisprudence defined foreign judgments as: (judgments are issued in the name of a foreign country, regardless of where the decision was issued) <sup>(79)</sup>

A judiciary judgment in order to be a foreign judgment it requires the following:

- 1- It should be issued by a court outside the State to be recognized by the judgment regardless of its type.
- 2- It is related to rights procedures
- 3- It should be paid a sum of money, the judgment of a movable property, reckoning in connection with civil proceedings.

In the opinion of the researchers, the foreign judgment is: the judgment issued by a court formed outside the country to be recognized, and in a manner to pay the amount of money, or the judgment of a movable property, or reckoning, or related to civil proceedings

## **The second chapter**

### **Foreign judicial judgment between monitoring and auditing**

There are some countries that do not recognize the foreign judicial judgment unless there is an international agreement , another countries do not recognize it except through two systems: New lawsuit system and order execution system, the new lawsuit system does not recognize the judgment issued in a foreign country unless a new lawsuit has been instituted to claim the foreign judgment to be recognized, as for the order of execution, the foreign legal judgment may not be executed except after obtaining he execution order from the state in which the decision is to be executed, this is done either through monitoring or reviewing as two execution order systems

Accordingly, each of these two systems and the position of the legislation and the national judiciary on these two systems should be stated and this will be addressed through the following demands:

#### **The first topic:**

##### **Monitoring system**

The national judge shall base this system on the basis of monitoring the foreign judicial judgment to be recognized, by verifying the availability of certain conditions stipulated by law, namely the conditions of validity of the foreign judgment. If these conditions are met, the national judge shall order the recognition of this judgment. This includes addressing conflict and monitoring the application of the law on conflict.<sup>8</sup>

This system is based on the principle of respecting the foreign judicial judgment by accepting its findings, even if its findings are contrary to what the National Court will rule in case the lawsuit is brought before it, based on the nature of the mechanism of conflict of laws as long as the national support rules accept the application of foreign law, as the acceptance of foreign law in the phases of conflict resolution and rejection in the implementation phase is not right, this system requires a set of conditions that should be met in the provision to be implemented, namely: Issuance of the judgment by a competent international court, the judge's adherence to the law referred to by the rule of reference, respect for the judgment of the defense rights, not to

conflict with the French international public order, the role of the judgment without fraud<sup>9</sup>. This system was adopted by the Jordanian legislator in Article (7)<sup>10</sup>. Law No. (8) of (1952)<sup>11</sup> of the Jordanian Foreign Execution Law. As adopted by the Egyptian legislator in Article (298) of the Egyptian Code of Civil and Commercial Procedure<sup>12</sup>

In the point of view of the researchers that the monitoring system is based on monitoring the foreign judicial judgment, and that certain conditions should be met in this judgment to be recognized and this control is not intended to review the case, but it should look at the verdict in form and not objectivity, and these conditions stipulated in almost laws, these regulations include the Jordanian Foreign Execution Law and the Egyptian Civil and Commercial Procedure Law.

### **The second topic:**

#### **Review system**

The national judge is based on this system on the basis of a review of the foreign judgment objectively, in terms of the application of the foreign judge of the legal rule on the dispute that implement it and not only review the judgment in terms of form and procedures (<sup>13</sup>15)

The court of the country which is to recognize the foreign judgment under this system shall review the proceedings again, It shall ascertain that the foreign judge has applied the applicable law to the facts, the courts of the country of execution may be amended in the operative part of the judgment and may accept new applications in the case, the court may have dealt with the dispute again in terms of evidence, requests, and judgment procedures<sup>14</sup>

According to this system, a foreign juridical judgment has no value outside the borders of the country in which it was rendered because the foreign judge ruled in the name of his country and could not imagine that he had infringed the limits of the country in which it was issued, the aim of the review system is to achieve the principle of sovereignty and mistrust in foreign justice<sup>15</sup> The researchers believe that this system is the opposite of the first system, which does not look to the form and does not require certain conditions in foreign rule to be recognized, Indeed, the national judge reopens the case from the beginning, he shall ensure that the decision issued by the foreign country is a valid decision based on facts and evidence presented in the lawsuit, thus, this system is intended to review the case and confirm the principle of state sovereignty. This system was adopted by some countries such as Lebanon and France in the nineteenth century in its famous rule of 19 April 1819

### **The third topic**

#### **The opinion of the judiciary and national legislature on monitoring the foreign judicial judgment**

In order to know the opinion of the judiciary and national legislation on the foreign rule to be recognized must address their position and then the mechanism of monitoring the foreign rule by the national judiciary will be addressed through the following:

#### **Firstly: the opinion of legislation**

Some national legislation has adopted two systems of monitoring and auditing. The Jordanian and Egyptian legislators, for example, have introduced the monitoring system to recognize the foreign judicial judgment before the judiciary. This recognition, however, is conditional on the fact that the foreign judicial judgment is enforced

Therefore, the external conditions that must be included in the foreign legal judicial judgment to be recognized in the national state must be met by its international validity.

However, the legislator distinguishes between judgments issued by foreign courts relating to status and eligibility and those relating to civil and commercial matters, for example, if there is a judgment regarding the legacy of a deceased issued by a court outside the national state to be recognized as French or British, the heirs may invoke the effects of this judgment

before the national judiciary without obtaining any restriction or condition for recognition, as for the provisions relating to rights and commercial matters, the national State may not recognize these provisions unconditionally, The implementation of a foreign legal judgment on money requires the intervention of public authority, the public authority in the national state does not take any orders from a foreign judiciary, so it must include the order of execution from the national judiciary.<sup>16</sup>

The Iraqi legislator has recognized the provisions relating to the status and eligibility as a ruling on inheritance and custody only without requiring a decision by the Shari'a court to implement it, Provisions relating to civil and commercial matters shall not be recognized until after the decision of the competent Iraqi court to implement it, unless there is an international agreement.<sup>17</sup>

## **Secondly: The opinion of the judiciary**

The Egyptian and French judiciary have taken into consideration the distinction between foreign judgments relating to the situation and eligibility provided for in the legislation and admitted it unconditionally, Provisions relating to civil and commercial matters which may not be recognized unconditionally, These conditions are the conditions for the execution of a foreign judicial judgment before the national judiciary

Accordingly, the Egyptian Court of Cassation ruled that: (The provisions of the Egyptian legislation concerning the execution of foreign judgments must verify the verdict from a competent judicial body in accordance with the law of the country in which it was issued, as stipulated in Article (493/1) of the Code of Procedure and Article (2/1) of the Agreement on the Implementation of the Provisions Concluded between the States of the League of Arab States on 14/12/1952)<sup>18</sup>

The Jordanian judiciary did not follow up Egypt and French Judiciary whereas it didn't differ among the judicial judgments issued by foreign courts concerning the status and eligibility and the legal and commercial judgments, rather, certain conditions are required for the recognition of a foreign judicial judgment regardless of the subject

For example, a request for recognition of a judicial judgment issued by a foreign court before the Jordanian judiciary concerning status and eligibility, The Jordanian judiciary requires a restriction or condition for recognition, which is not true, so that it is not the legal reasoning that the provision concerning the guardianship of the person who called for the recognition of this judgment before the National Court, The Jordanian courts should recognize this provision unconditionally, Other provisions, such as those relating to civil and commercial matters, which are required by the Jordanian judiciary to recognize it, are subject to a restriction or condition. The Jordanian Court of Cassation ruled: ( ..... Whereas it is established in this case that the notification related to the lawsuit requesting the finalization of the verdict in which the execution form dated 13/10/2008 stating that the report and after it was addressed to the Royal Hashemite Court, the official in charge of the Bureau stated that he does not know anyone by this name and stated that the notification shall be delivered to the legal department as in the letter of the secretary general of the Royal Hashemite Court No. 13/1/2771 dated 26/4/2011 and saved in the case file includes that (Mr. Mohammed Anwar Farid Saleh is not a member of staff of the Royal Hashemite Court) , Thus, the judgment to be given the form of execution is not enforceable in accordance with the provisions of Article VII of the Law on the Execution of Foreign Judgments, where there is no evidence that the defendant was informed in accordance with law.<sup>19</sup>

Thus, the researchers believe that foreign judicial judgments to be recognized before the national judiciary, which relate to civil and commercial matters, and there is no agreement between States under which the recognition of these judgments must be a limitation or condition for recognition, This is stipulated in the Egyptian Civil and Commercial Procedures Law in Article 301 (<sup>2022</sup>) , Part of the jurisprudence was not to recognize foreign judicial rulings before the national judiciary unless it was covered by the execution order or an agreement on the definitive force.<sup>21</sup>



Therefore, foreign judicial judgments that are not recognized before the national judiciary are those related to civil and commercial matters that are not covered by the execution order, those judgments that are contrary to the conditions stipulated in national laws, such as the law of implementing Jordanian judgments in Article 7 thereof, and Article (298) of the Egyptian Civil and Commercial Law, namely: the condition of reciprocity, non-violation of the foreign order of public order and the issuance of the foreign judgment by a competent foreign court and the lack of circumvention of the law

### **Thirdly: The mechanism of national judiciary control of foreign judicial judgments**

In reference to the provisions of the national laws, including the Jordanian Law for the Execution of Foreign Judgments, we find that it provides for the mechanism of monitoring the foreign judgment in Articles (3, 4, 6)<sup>22</sup>, and the Egyptian Civil and Commercial Procedure Law in Article (297)<sup>23</sup>. This shall be by filing a lawsuit to execute the foreign judgment before the court of first instance, the court of first instance shall be competent if the convicted person has a place of residence within the jurisdiction of the court, Or that the property of the convicted person who wishes to execute it falls within the jurisdiction of the court if the convicted person has no place of residence in Jordan, this lawsuit is called an action to give the foreign judgment the form of execution, This shall be summoned to the court by the applicant with a certified copy of the judgment to be executed in the case of the judgment in Arabic language, if it is issued in a foreign language, the applicant must submit a certified copy of the translation of the judgment in addition to a copy to inform the convicted person

By the proceedings, the court shall ensure that the conditions to be fulfilled in the execution of the foreign judicial judgment are fulfilled, as stated in Article (7) of the Jordanian Foreign Execution Law and Article (298) of the Egyptian Civil and Commercial Procedure Law, If these conditions are met, the Court of First Instance shall issue its decision to give the foreign judgment the form of execution, that is, the judgment shall have an executive force as if it were issued by the national courts and executed before the competent enforcement departments to implement the Jordanian judgments

Article (4): The lawsuit shall be filed by requesting the execution of a foreign judgment by summoning to the court of first instance, where the convicted person resides within his jurisdiction or the court whose jurisdiction falls under the property of the convicted person who wishes to execute the judgment if the convicted person does not reside in the Hashemite Kingdom of Jordan

Article 6: The convicted person shall submit to the court a certified copy of its translation if the judgment is not in Arabic to inform the convicted person

Article (7) has been referred to in the margin previously

(25) Article (297) of the Egyptian Code of Civil and Commercial Procedure: (The application for execution of the order shall be submitted to the court of first instance in which its execution is intended in the normal circumstances of filing the case)

Accordingly, the Egyptian Court of Cassation ruled that articles 296, 297, 298, and 301 of the Code of Civil and Commercial Procedure stipulate that the original is that the request to execute the judgments and orders issued in a foreign country shall be submitted to the court of first instance, However, the legislator departed from this original in article (301) in case of a treaty<sup>24</sup>

The Jordanian Court of Cassation ruled: (as the beneficiary of Article (3) of the Law on the Execution of Foreign Judgments in Jordan by filing a lawsuit to execute it before the Court of First Instance, which is within the jurisdiction of the convicted person or the court whose jurisdiction falls within the property of the convicted person if he is not a resident of the Kingdom .....)<sup>25</sup>

### **CONCLUSION:**

After studying, researching, checking, and reviewing the jurisprudential, legislative and judicial opinions on the subject of foreign judicial judgment between the monitoring and review systems, the researchers reached a number of the following conclusions and recommendations:

### **Firstly: Results**

- 1- There are two systems for recognizing foreign legal provisions issued in a foreign country, namely the filing of a new case and the order
- 2- The judgments issued by foreign courts monitored by the national judiciary are of two types: judgments relating to the case and eligibility and judgments concerning civil and commercial matters

### **Secondly: Recommendations:**

- 1- The researchers hope to amend the provisions of the laws of pleadings and the laws of the implementation of foreign judgments by recognizing foreign judicial judgments directly before the national judiciary
- 2- The researchers hope to amend the provisions of the laws of pleadings and laws implementing foreign judgments by explicitly stipulating the recognition of foreign provisions relating to the situation and eligibility issued in a foreign country before the national judiciary, unconditionally and the provisions related to civil and commercial materials must be provided a restriction or conditions, which are the conditions of Implementation before the national judiciary

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- <sup>21</sup> ) Aldawdi, Ghaleb, (1996), Jordanian Private International Law, First Edition, Second Book, Amman: Hammad Printing Center, p. 304.
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Article (4): The lawsuit shall be filed by requesting the execution of a foreign judgment by summoning to the court of first instance, where the convicted person resides within his jurisdiction or the court whose jurisdiction falls under the property of the convicted person who wishes to execute the judgment if the convicted person does not reside in the Hashemite Kingdom of Jordan  
Article (6): The convicted person shall submit to the court a certified copy of its translation if the judgment is not in Arabic to inform the convicted person  
Article (7) has been referred to in the margin previously
- <sup>23</sup> ) Article (297) of the Egyptian Code of Civil and Commercial Procedure: (The application for execution of the order shall be submitted to the court of first instance in which its execution is intended in the normal circumstances of filing the case)
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