

**Enforcement of Foreign Judgments and  
Award in Jordan and Iraq**

**A lecture addressed to the IBA  
Conference of Bahrain  
(5 – 8/3/1989)**

**Law and Arbitration Centre**

**Dr. Hamzeh Haddad**

**Tel.: 00 962 6 5345 777**

**Fax: 00 962 6 5340 666**

**P.O Box 2696 Amman 11821 Jordan**

## Introduction

This study deals with the requirements for recognition and enforcement of foreign judgments (and arbitral awards) in Jordan and Iraq. In the absence of an international convention, this matter is governed in Jordan by the Act No. 8 of 1952<sup>(1)</sup>, and in Iraq by the Act No. 30 of 1928<sup>(2)</sup>. Both countries were parties to the Arab Convention for Enforcement of Judgments (and Arbitral Awards) of 1952<sup>(3)</sup>, which has been replaced by Riyadh Convention of 1983 for Judicial Co-operation<sup>(4)</sup> in respect of countries which are parties to the latter<sup>(5)</sup>. Iraq and Jordan have also adhered to the Riyadh Convention<sup>(6)</sup>. On the other hand, while Jordan has adhered to the New York Convention of 1958 for Enforcement of Arbitral Awards<sup>(7)</sup>, Iraq has not. In addition, Jordan and Iraq have entered into bilateral conventions with some other countries, such as the Jordanian – Lebanese Judicial Convention of 1954<sup>(8)</sup>, the Jordanian – Syrian Judicial convention of 1954<sup>(9)</sup>, the Iraq – Turkish Convention of 1947 for Judicial Co-operation<sup>(10)</sup> and the Iraqi – Egyptian Convention of 1965 for Legal and Judicial Assistance<sup>(11)</sup>.

The current study will be concerned only with national laws in Jordan and Iraq, ie, with the Act No. 8 and the Act No. 30 respectively, in comparison with the Riyadh Convention. It will be divided into two parts: I- Nature of Enforceable Judgments. II- Other Conditions of Enforcement.

### 1- Nature of Enforceable Judgments

Jordanians Law requires that the judgment to be enforced in Jordan must be foreign, judicial, civil and final. Arbitral awards are treated in Jordan exactly like judgments.

- 
- (1) It has been held in Jordan that where that Act contravenes with the general procedural law, the priority of application will be to the former (Civil Cassation 410/75, Bar Association Journal, 1977, p. 1419).
- (2) See H. Haddawi and G. Da'woodi, Private International Law, 2<sup>nd</sup> pat, 1982, p. 262 ff.
- (3) Jordanian Official Gazzette, 1954, Annex 1 of No. 1195, Iraqi Official Gazzette (Waq'a'e'), No. 3802 of 6/6/1956.
- (4) See generally, A.W. Naddawi, Enforcement of Civil Judgments under Riyadh Convention, in (Iraqi) Comparative Law Journal, 1985, p. 118. It is to be noted that the Council of the Arab Ministers of Justice ratified the Convention in 1985.
- (5) Article (72) of the Riyadh Convention.
- (6) The Iraqi (Waq'a'e'), No. 2976 of 16.1.1984. Jordan Official Gazzette, No. 3329 of 1985. The other countries which have adhered to the Convention until 16.2.1989 are Tunisia, Sudan, Syria, Somalia, Palestine, Libya, Morocco, Mauritania, Arab Yamen and Democratic Yemen, (A written answer given by the Arab League to the lecturer upon his enquiry).
- (7) Official Gazzette, No. 3585 of 1988 though the decision by Jordanian Cabinet ratifying that Convention was issued on 8.7.1979 (Loc. cit).
- (8) Official Gazzette, No. 1182 of 1954, Annex 1.
- (9) Official Gazzette, No. 1202 of 1954, Annex 3.
- (10) Iraqi (Waq'a'e'), No. 2482 of 1947.
- (11) Iraqi (Waq'a'e'), No. 1061 of 1965.

## 1- Foreign Judgments and Awards

The application of Jordanian Act No. 8 is confined to foreign judgments. According to Article (2), a judgment is considered foreign when it is rendered by a non – Jordanian court, ie, a foreign court. Article (1) of the Iraq Act No. 30 also defines a foreign judgment as a judgment which is rendered by a non – Iraq court. While the Riyadh Convention does not contain a similar rule, it provides in Article (25/b) that each Contracting States recognizes and enforces the judgments rendered in any other Contracting State.

The provision in Iraq and Jordanian laws that the enforceable decision must be rendered by a foreign “court” simply means the exclusions of administrative decisions, that is to say that such decisions are not enforceable in either country. By contract, Article (25/a) of Riyadh Convention, defines an enforceable decision as any decision issued in accordance with judicial or voluntary procedure by a court or any other competent authority in a Contracting State. A Voluntary Decision in Arab countries is derived form French Law in which it is called “decision gracieuse ou volontaire”. Several definitions have been given to that term, but one can say that none of them is complete<sup>(12)</sup>. However, such a decision is normally issued by a court in non – adversary proceedings according to its voluntary, not judiciary power. The Convention, by saying that the decision may be issued by any other competent authority, may suggest that administrative decisions are enforceable in the Contracting States. Whether this literal understanding is intended by the draftsmen of the Convention is doubtful, particularly when remembering Article (25/b) which provides that each Contracting State recognizes the decisions issued by the COURTS of any other Contracting State.

To enforce a foreign judgment in Iraq or Jordan, that judgment must be final, which is the same under the Riyadh Convention<sup>(13)</sup>. A judgment is final when it is not subject to an objection in the country where it was rendered because, for instance, the judgment was rendered by the highest court, or that the time limit within which the objection must be taken already expired and accordingly the judgment became final<sup>(14)</sup>.

Arbitration awards issued in a foreign country are dealt with in Jordan in the same way as foreign judgment, where Article (2) of the Act No. 8 states that a “foreign judgment” includes “arbitral awards .... if , according to the laws of the country in which the arbitration proceedings took place, the award is enforceable as a judgment in the said country”. It makes no difference whether arbitration is institutional or ad hoc. This provision has no equivalent in Iraq Law and that is why different views have appeared in respect of this matter<sup>(15)</sup>. According to one view, the rules under Articles (215-276) of the Code of Civil Procedure, dealing with arbitration, apply to foreign judgments. This means that they are enforceable in

---

(12) See generally, P. Herzog and M. Weser, *Civil Procedure in France*, Nijhoff, 1967, p. 495.

(13) Article (7/1,e) of Jordanian Act No. 8. Article (6/e and 8/b) of the Iraqi Act No. (30). Article (25/b and 31/a) of the Riyadh Convention.

(14) It has been held in Jordan that notified a foreign judgment to the defendant by publication without objection by him, means that the Judgment has become final (Civil Cassation 410/75, Bar Association Journal, 1977, p. 1419); and that the burden of proving that the judgment is not final is rested on the judgment debtor (Civil Cassation 294/74, Bar Association Journal, 1976, p. 475); and that if he proves so, the judgment would be unenforceable (Civil Cassation 51/58, Bar Association Journal, 1958, p. 334); and that an action for enforcing a foreign judgment must be stayed if it is proved that the judgment is still subject to objection (Civil Cassation 89/65, Bar Association Journal, 1965, p. 1013).

(15) For details, see Haddawi and Da'woodi, *op. cit.*, p. 280.

Iraq if the conditions of enforcing national awards are met. The legal ground of this view is that the said rules are of general nature to the extent that they apply to both national and foreign awards. An apposite view states that Iraqi legislator does not adopt this conclusion expressly, nor could it be inferred from the legislative texts, but, according to this view, arbitral awards rendered in foreign countries may be enforceable in accordance with the conventions to which Iraq and those countries are parties, if any. Regardless of these two opinions, one may say that Iraqi Act No. 30, while does not deal with arbitration awards, would extend, as suggested, to a foreign award incorporated into a judgment of a foreign court<sup>(16)</sup>. In other words, a foreign arbitral award would in these circumstances be regarded as if it were a judgment.

Turning again to Jordanian Law which provides, as has just been seen, that a foreign award must be enforceable in the place in which it was issued, which means that the award should have been reduced to a judgment in the foreign country. This approach may be criticized since it may be difficult in practice or even impossible to achieve this goal in certain circumstances, particularly in institutional arbitration. In this type of arbitration, it may happen that the parties involved in the proceedings including the arbitrators, and all other relevant factors have no relation whatsoever with the place of arbitration except that the proceedings were conducted there. In such a case, the foreign court may reasonably reject to enforce the award rendered in its country, and that means that the award may not be enforced in Jordan either.

The Riyadh Convention seems to adopt a provision similar to that of Jordanian Law, where it says in Article (37) that for enforcing an award in any of the Contracting States, the award must be accompanied with a certificate issued from a “judicial authority” to the extent that the award is enforceable. As will be seen later, it is assumed that the Convention refers here to the court of the country in which the award was rendered. Although the Convention considers the awards as judgment, Article (37) makes the enforcement of awards subject to the national rules applicable in the country in which the enforcement of an award is sought. This restriction is strange enough and unjustified for it gives the priority of application to national laws over the Convention, and it would be preferable had the Convention unified the conditions of enforcing the arbitral awards in general rules, but without ignoring the fact that there might be certain exceptions to these rules. However, Article (37) of the Convention empowers the court, to which the request for enforcement is submitted, not to enforce the award in the following cases:

- A:** If the laws of its country prohibits the settlement of the relevant dispute by arbitration, or if the award was against Shari’a or Public Policy in that country, or
- B:** If the award was based on a void submission or arbitration clause or was not final, or
- C:** If the arbitrators had no jurisdiction to settle the dispute under the arbitration agreement or the law on which the award was based, or
- D:** If the disputing parties were not properly notified.

## 2- Civil judgment

---

<sup>(16)</sup> See, Lew (Julian, D.M), The recognition and enforcement of arbitration agreements and awards in the Middle East, in *Arbitration International*, 1985, pp. 161, 167.

The application of Jordanian Act No. 8 is limited to judgments of civil cases. A civil case must be understood in its wide sense to the extent that it includes commercial cases in respect of the countries differentiating between civil and commercial matters, such as most of Arab countries and the Continental. Generally speaking, a civil judgment in this sense means in Jordan a judgment, the subject – matter of which is a financial right whether personal or in rem<sup>(17)</sup>. Even so, Article (3) of the Jordanian Act No. 8 confines the enforcement to civil judgments which include:

- A:** The payment of a certain sum of money<sup>(18)</sup> regardless of the source of the obligation, which could be a contract, unilateral will, tort, enrichment without cause or the law itself<sup>(19)</sup>.
- B:** The delivery or transfer of title of a movable thing<sup>(20)</sup>.
- C:** The settlement of accounts, such as settlements between the parties to a partnership.

Article (6/c) of Iraqi Act No. 30 decides that a foreign judgment is enforceable if it relates to a debt, a certain sum of money or to civil compensation. It seems that the first case compresses the other two for either of the latter is not, but a debt in its large sense, or what is called under the Iraqi Civil Code as “obligation or personal right<sup>(21)</sup>”. Like Jordanian Law, however, it is irrelevant under the Iraqi Law whether the right is Civil or Commercial as regards the countries adopting such distinction. Also, the apparent meaning of the above – mentioned texts under both laws may suggest that enforcement of foreign judgments is absolutely limited to the cases mentioned therein, and no other case may exist by analogy<sup>(22)</sup>. But while Jordanian Law extends to apply, in certain circumstance, to the rights in rem concerning movable things, Iraqi Law applies only to personal rights. However, both Laws are in agreement to the effect that national courts have restricted jurisdiction in respect of rights in rem relating to immovable things<sup>(23)</sup>.

The providing in Iraqi and Jordanian laws that the enforcement is confined to civil and commercial matters means, inter alia, that a criminal judgment is unenforceable. A similar provision is adopted by Riyadh Convention which adds in Article (25/b) that the Convention

---

(17) It also includes an intellectual right according to Article (67) of the Civil Code which, however, does not contain any provisions governing that right.

(18) If a foreign judgment contains that the payment to be made in foreign currency, its enforcement will be in Jordan currency in the official rate of the Central Bank on the date of payment (Civil Cassation 51/76, Bar Association Journal, 1976, p. 1597).

(19) These are the sources of obligations under the Second Book of Civil Code.

(20) However, the rules providing that the transfer of title of some movable things, like cars, must be registered from the very beginning in the Books of the relevant Official Department, are of Public Order. Accordingly, any foreign judgment containing the transfer of title of such things are unenforceable in Jordan.

(21) The First Book of that Code.

(22) C.f, Jordan Civil Cassation 127/85, Bar Association Journal, 1985, p. 1886, where it was held that a judgment deciding bankruptcy may be enforced in Jordan. However, such judgments are enforceable in Jordan if the Jordanian – Libanese Convention referred to above (Supra, para. 1) applies (Civil Cassation, 27/71, Bar Association Journal, 1971, p. 388).

(23) See Article (36) of Iraqi Code of Civil Procedure, and Article (37) of Jordanian Code of Civil Procedure.

also applies to administrative and family law judgments. Nevertheless, Article (25/c) excludes the following situation from the scope of applying para. (b) of the same Article:

- A:** Where a judgment is against the government of a Contracting State in which it is intended to enforce the judgment, or against one of its officials for actions committed by him during or by reason of his job only.

This provision is vague and may be subject to different interpretations. It may mean that any judgment, whatever it is called, is unenforceable in a Contracting State as long as it is against its Government. This interpretation seems to be unjustified at least in respect of civil matters in which the Government was involved not as a dominating and sovereign body but as an individual. For instance, the Government of Jordan may, as a buyer, enter into a contract with an Iraqi seller, and may accept that in case of dispute the jurisdiction would be given to Iraqi courts. Suppose, then, that the competent Iraqi Court has rendered a judgment against the Government to the effect that it should pay a certain sum of money to the Iraqi seller. In this example, which much happens in practice, the judgment may not be enforced in Jordan if the Convention applies, while it is so according to the Jordanian Act No. 8 which makes no distinction in civil judgments between whether the foreign judgment was against the Government of Jordan or any other person.

However, it may be wise to understand this exception and other exception as well to mean that they are outside the scope of the Convention itself and therefore are subject to national laws originally applicable to the dispute, and not to mean that they are absolutely unenforceable in the Contracting States.

- B:** Where a judgment is in contradiction with an international treaty or agreement to which the State requested to enforce the judgment is a party.
- C:** Where a judgment is related to provisional and protective measure, or to bankruptcy, taxes or other (official) fees.

Odd enough, the Convention excludes here the provisional and protective measures from the scope of its application while in another place it expressly provides, as was indicated, for enforcing Voluntary Decisions, examples of which are the said measure in certain circumstances<sup>(24)</sup>. Again, this gives another indication that the draftsmen of the Convention may mean, by Article (37) referred to above, that the enforcement is confined to judicial decision, ie, judgment in the familiar sense of this term. If this is true, the exception of the provisional and protective measures may then be justified, simply, on the ground that they are not regarded as judgments.

The exclusion of judgments of bankruptcy may be due to its peculiarity and seriousness in practice to the extent that one can say that the national rules governing bankruptcy are most probably of Public Order<sup>(25)</sup>.

---

(24) See Edwar E'ed, *Encyclopedia of Procedural Law*, vol. 2, Dar Al-Mustashar, Beirut, 1987, p. 231, para. 62.

(25) Cf., *supra*, footnote (22).

The excluding of taxes and fees may be due to the absolute sovereignty of the state over its territories, including its right to collect taxes and fees. It may be interested to mention that this exception seems to apply regardless of whether the judgment is for the benefit of the Entity collecting the tax or fees, or against it, as, for instance, where the judgment obliges that Entity to return what was illegally paid as tax or fees; and regardless, in certain types of fees, of whether that Entity is a non – governmental one, such as Associations and Syndicates where, by the laws governing them, they are independent of the Government.

Moreover, Article (30) of the Convention authorizes a Contracting States not to recognize or enforce a judgment in certain cases of which are the following<sup>(26)</sup>:

- 1- If the judgment does not observe the laws of the States in which the enforcement is sought concerning legal representation of incompetents. Clearly, this rule applies only to physical persons.
- 2- If the dispute which was the subject – matter of the judgment was also the subject – matter of another judgment already issued between the same disputing parties, relating to the same subject and source of the right, and was final in the States required to enforce the judgment, or in another Contracting State but was recognized in the former one.
- 3- If the dispute which was the subject – matter of the judgment constitutes the subject – matter of an action pending in a court of the State required to enforce the judgment, and that action involves the same parties and the same subject and source of the right, and was filed in the court before referring the said dispute to the court which issued the judgment.

Finally, it is to be noted that the limiting of enforcement in Jordanian and Iraqi Laws and also in Riyadh Convention to civil cases does not mean that the judgment must render by a civil court. Therefore, civil judgments are enforceable even if they were issued by a criminal or administrative court. What is relevant here is the nature of the judgment not the court issuing it<sup>(27)</sup>.

## II- Other Condition for Enforcement

There are other conditions for enforcement of foreign judgments, which are provided for under Article (7) of Jordanian Act No. 8<sup>(28)</sup> and also under both Iraqi Act No. 30 and Riyadh Convention. Some of these conditions have already been examined, and the others will be considered in the following paragraphs.

### 1- Jurisdiction

---

<sup>(26)</sup> Other cases will be referred to under the second chapter (II) of this study.

<sup>(27)</sup> In Iraqi Law in particular, Article (6/c) of the Act No. 30 states that a foreign judgment is enforceable in Iraq in case it relates to “Civil compensation ..... decided by a criminal court”.

<sup>(28)</sup> It has been held in Jordan that these conditions are restricted, and no other condition may be inferred by analogy (Civil Cassation 51/76, Bar Association Journal, 1976, p. 1597).

A judgment of a foreign court will be enforced in Iraq only if that court had territorial and subject – matter jurisdiction<sup>(29)</sup>. When international territorial jurisdiction is granted to the courts of a given country, the subject – matter and local territorial competence should be determined by the laws of that country<sup>(30)</sup>. Article (7) of the Act No. 30 has given the jurisdiction to the court of a foreign country in the following cases<sup>(31)</sup>:

- A:** Where the action relates to movable or immovable things existing in that country, or
- B:** It relates to a contract concluded in that country, or to be performed totally or partially in its territories, or
- C:** It relates to acts done totally or partially in the said country, or
- D:** Where the judgment debtor has voluntarily appeared before the court of that country, or
- E:** Where he has agreed to the jurisdiction of the foreign court.

According to Article (1) of the Act, a “foreign country” means the country in which the judgment was issued.

Article (25/b) of the Riyadh Convention provides that for enforcing judgments in any of the Contracting States, the court which has issued the judgment must have jurisdiction in accordance with the rules applied in the State in which the enforcement is sought. Nevertheless, it also provides for certain rules of international jurisdiction, to be applied except where that State gives the jurisdiction solely to its courts or to the courts of any third state; and this is another example of the situation in which national laws supercede the Convention.

According to Article (26-28) the cases of jurisdiction are as follows:

- Firstly,** where the dispute relates to the capacity of a person or to his (civil) status in general, the jurisdiction is being given to the courts of the States which he has its nationality at the time of submitting the action for enforcement.
- Secondly,** if the dispute relates to a right in rem, the jurisdiction has been given to the courts of the States in which the real – estate is located.
- Thirdly,** in all other cases, the courts of a Contracting States by which the judgment has been issued shall have jurisdiction in any of the following situations:
  - A:** If, at the time of the first hearing (opening of the case), the defendant has his domicile in that State, or

---

<sup>(29)</sup> Articles (6/b) and (7) of the Act No. 30. See also Haddawi and Dawodi, op.cit, p. 267.

<sup>(30)</sup> Article (28) of Iraqi Civil Code.

<sup>(31)</sup> It has been held in Iraq, that a foreign court will have jurisdiction if one of the cases mentioned in Article (7) of the Act No. 30 exists, and therefore it is not necessary that all these cases must exist (No. 1658g, 957 of 21/9/1957, Judiciary Journal, 1958, p. 244).

- B:** If, at that time, the defendant has his place of business or has a commercial or industrial branch or otherwise in that State and the action was raised against him in respect of that business or branch, or
- C:** If, in case the dispute relates to a contractual obligation, that obligation was performed or intended to be performed in that States by an agreement between the plaintiff and the defendant, or
- D:** if, in case of non-contractual liability, the act engendering the liability was committed in that State, or
- E:** If the defendant has expressly accepted the jurisdiction of the courts of the States, whether by electing a domicile (of choice), or by any agreement to this effect provided that the laws of that State does not prohibit such an agreement, or
- F:** If the defendant raised his defenses in the subject – matter of the dispute without raising a plea to the jurisdiction, or
- G:** If the question was related to matters raised incidentally (such as a counter – claim) and the courts of the States had, according to the above-mentioned situations, jurisdiction in respect of the original claim.

Like Iraqi Law and Riyadh Convention, Article (7/1,a) of Jordanian Act No. 8 stipulates that the court issuing the judgment must have jurisdiction. This includes both the territorial and subject matter jurisdiction<sup>(32)</sup>. The territorial one includes the international jurisdiction and local competence. Also, Article (23) of Jordanian Civil Code provides that the local territorial jurisdiction is subject to the laws of the county in which the procedure took place. But unlike Iraqi law, Jordanian Act No. (8) has not determined the cases of international jurisdiction, nor is there any precedent to this effect. This would suggest that the matter to be solved by resorting to the rules of private international law concerned with international jurisdiction. However, Article (7) of the Act precludes Jordanian courts from enforcing a foreign judgment in certain cases, of which are:

**Firstly,** where the judgment debtor had not dealt with business in the area in which the court had jurisdiction, nor had he his domicile therein. By virtue of Article (39) of the Civil Code, a domicile means the place in which a person usually resides. According to one precedent, the “dealing with business” means its repetition severally<sup>(33)</sup>. A person, however, may have more than one domicile in different countries at one time. In such a case, it may be that it is sufficient for considering the courts of a foreign country as having jurisdiction if one of these domiciles is located in that country.

On the other hand, the Act does not determine the time at which the domicile should be, or at which the dealing with business should have taken place. But it

---

<sup>(32)</sup> It has been held that jurisdiction of subject matter is of Public Order (Civil Cassation 490/66, Bar Association Journal, 1967, p. 307).

<sup>(33)</sup> Civil Cassation 410/75, Bar Association Journal, 1975, p. 1419.

seems reasonable to say that date is the date of submitting the action to the court. As was mentioned, the same principle applies under Riyadh Convention<sup>(34)</sup>.

**Secondly**, where the judgment debtor had not admitted the jurisdiction of the court, nor had he appeared before it by his choice.

The providing for these two situations may lead to the conclusion that Jordanian legislator considers a court of a foreign country as having jurisdiction in each case the judgment debtor has a place his choice.

The providing for these tow situation may lead to the conclusion that Jordanian legislator considers a court of a foreign country as having jurisdiction in each case the judgment debtor has a place of business or domicile in that country. It also has jurisdiction whenever he appears before that court by his choice even if he has no place of business or domicile in the said country. As was stated, the latter situation is similar to that provided for in Iraqi Law.

## 2- Service of a notice

Article (7/c) of Jordanian Act No. (8) stipulates that a judgment debtor should have been duly served with a notice for appearing before the court which issued the judgment<sup>(35)</sup>. It is irrelevant whether he has afterwards appeared or not. According to Article (23) of the Civil Code, the method and other conditions of serving the notice are subject to the law of the country in which the proceedings had taken place. As has been indicated, it seems that a foreign judgment is enforceable in Jordan though the judgment debtor had not been duly served with a notice if he voluntary before the court by which the judgment was issued.

This condition under Jordanian Law is similar to the provision of Article (6/a) of Iraqi Act No. (30) in which it is stated that the judgment debtor should have been notified of the action in a reasonable and sufficient way. Like Jordanian Law, this matter is to be judged by the national court in the light of the law applicable to the proceedings, which is, as was indicated, the law of the foreign country in which the proceedings had taken place. However, a similar condition is also provided for under Article (30/b) of Riyadh Convention<sup>(36)</sup>.

## 3- Fraud of Dol

It is also provided by Article (7/a) of Jordanian Act No. 8 that a foreign judgment should not have been rendered as a result of fraud or dol. While Iraqi Law has a similar

---

<sup>(34)</sup> Cf., Civil Cassation 410/75, Bar Association Journal, 1975, p. 1419, where it was held that during with business might be at any time. But in a later case it was held that such dealing should be at the time at which the disputable right such arose. (Civil Cassation 67/78, Bar Association Journal, 1978, p. 1118). The latter situation, however, should necessary take place before bringing the action to the court.

<sup>(35)</sup> See also Civil Cassation 413/64, Bar Association Journal, 1965, p. 1198. On the other hand, it has been held that where a foreign court concludes that the defendant domicile is unknown, a Jordanian court cannot accept a further evidence to prove otherwise (Civil Cassation 67/78, Bar Association Journal, 1978, p. 1118).

<sup>(36)</sup> See also Article (37) of the Convention which permits the non-enforcement of an arbitral award if the parties were not duly notified.

rule<sup>(37)</sup>. Riyadh Convention has not. Fraud or dol under both laws seems to mean a fraudulent behavior, knowingly committed by one party to the action towards his opponent during the proceedings, by changing the facts in such a way that the outcome of the case had been affected<sup>(38)</sup>. On the other hand, in both Iraqi and Jordanian procedural laws, fraud or dol in this meaning constitutes an extra – ordinary ground for rehearing the same case in respect of final judgments<sup>(39)</sup>, and it may be that the same conditions there apply here as well. These are<sup>(40)</sup>:

- 1- The fraud or dol must be committed by one of the parties to the action or by his legal representative during the proceedings, in order to divert the judge from the truth. Also, fraud or dol may be committed by a third party provided that one party to the action knows the truth<sup>(41)</sup>.
- 2- That the other party could not know the truth during the proceedings<sup>(42)</sup>.
- 3- That the content of the judgment had been affected because of the fraud or dol to the extent that it would be otherwise issued if the truth was known.

Several examples of fraud or dol may be given, such as the theft of the other party's documents, bribing an opponent's attorney or witnesses or making illegal pressure against them, intercepting an opponent's correspondence and providing the court with the wrong address of the opponent's correspondence and providing the court with the wrong address of the opponent for serving him of notices<sup>(43)</sup>. Even the mere silence may, in certain circumstances, be regarded as a type of fraud or dol<sup>(44)</sup>. But the mere deny by one party of the other party's statement of claim is not fraud or dol, nor is it so his legal skill or otherwise in defending his case<sup>(45)</sup>.

---

(37) Article (8/a) of the Act No. (30) which adds that a foreign judgment may not be enforced if the defendant proves that the proceedings had not complied with justice and fairness.

(38) This definition is derived from Article (143) of Jordanian Civil Code relating to fraud in contracts. See also E'ed, op.cit, p 392, para. 121; Nabil Omar, Civil and Commercial Procedures, Ist ed., Al-Ma'aref, Alexandria, p. 1552, para 1104; Herzog and Wester, op.cit p. 479.

(39) Article (213) of Jordanian Code of Civil Procedure, and Article (196) of Iraqi Code of Civil Procedure.

(40) Eed, Loc. cit; Fat'hi Wall, Civil Judicial Law, Al-Nahda, Cairo, 1986, p 754, para. 376; Omar, Loc. cit.

(41) By analogy with Article (148) and (122) of Civil Code of Jordan and of Iraq respectively.

(42) See Egyptian Civil Cassation, 30.11.1966, year 17, p 1758.

(43) Syria Civil Cassation 1638, on 25.11.1969, The LAWYERES, 1969, No. 376.

(44) By analogy with Articles (144) and (121) of Civil Code of Jordan and of Iraq respectively. C.f., Syrian Civil Cassation, the LAWYERS, 1957, No. 268 where it was held that fraud or dol should occur by positive acts, and the mere silence might not be so.

(45) See the authorities in the footnote (40) above. See also Egyptian Civil Cassation of 23.2.1975, year 38, No. 286.

#### 4- Public Order

According to Jordanian Act No. 8, a foreign judgment must not be against Public Order in Jordan<sup>(46)</sup>, which is the same under both Iraqi Law and Riyadh Convention<sup>(47)</sup>. It is granted that the meaning of Public Order is relative and differs from one place or time to another according to all surrounding circumstances, including traditions, habits, customs and others. Of course, it is the task of the national court to determine whether a foreign judgment is against Public Order in its country.

#### 5- Reciprocity

Jordanian Act No. 8 provides for the principle of reciprocity in order to enforce foreign judgments in Jordan. That is to say, a foreign country in which the judgment was rendered permits the enforcement of Jordanian judgments in its territories. This is also included in Article (11) of Iraqi Act No. 30, which provides that “this Act applies to the judgments rendered by foreign courts whenever judgments rendered by Iraqi courts become enforceable in foreign countries according to a particular agreement with the State of Iraq or to particular Ordinances to be announced from time to time or according to the laws applicable in these foreign countries ....”.

This does not mean, however, that the Conditions required by foreign laws for enforcing Jordanian or Iraqi judgments must necessarily be similar to those which are provided for in Jordan or Iraq. This is due to the fact that every country normally has its own rules and policy in this regard, which may be different from other countries. What is important here is that a Jordanian or Iraqi judgment is enforceable in a foreign country whether absolutely, which is much doubtful, or subject to certain conditions required by its laws.

Iraqi Authorities, in applying Article (11) above, have issued certain Ordinances determining the countries whose judgments are enforceable in Iraq such as Britain, Syria, Lebanon, Italy, India and Jordan<sup>(48)</sup>. It is to be remembered that Iraq has also entered into a bilateral convention with Egypt in this respect<sup>(49)</sup>.

#### 6- Proceedings for Enforcement

In order to enforce a foreign judgment in Jordan, Article (4) of the Act No. 8 stipulates that there must be a judgment rendered by a Jordanian competent court according to certain

---

(46) Such as jurisdiction of subject matter (Civil Cassation, 490/66, Bar Association Journal, 1967, p 307) and the will of more than one third (1/3) of the decedent's estates (Civil Cassation 19/75, Bar Association Journal, 1975, p 1235).

(47) Article (6,d) of Iraqi Act No. (30), and Article (30, a) of Riyadh Convention which also stipulates that a judgment must not be against Shari'a or the Constitution in the State required to enforce it. See also Article (37) of the Convention relating to arbitral awards.

(48) Those are of Nos. 21/1928 (Britain), 5/1929 (Syria and Lebanon), 18/1929 (Italy), 10/1930 (India) and 32/1952 (Jordan).

(49) Supra, para. 1.

proceedings<sup>(50)</sup>. The Act confers the subject matter competence upon the First Instance Courts (Bida'ya). The court at the judgment debtor's domicile is territorially competent, and if he has no domicile in Jordan, the action may be brought where his property can be levied upon. As was indicated, domicile in Jordan Law means the place where a person usually resides. If a judgment was issued against more than one person, an action for enforcement must be brought against all of them<sup>(51)</sup>. These provisions may mean that where a judgment debtor has neither a domicile nor any property in Jordan, a foreign judgment cannot be enforced.

According to Article (6) of the Act, two copies of the foreign judgment must be annexed to the statement of claim: One to be kept in the official file of the court, and the other to be sent to the judgment debtor. If the judgment was rendered in a foreign language, an Arabic translation should also be annexed thereto. The action will then be subject to the rules of Civil procedure applied to every civil case. In all cases, the role of the Jordanian court is confined to verifying whether the requirements for enforcing the foreign judgment are met, and, if so, it is under a duty to enforce it. The court has no discretion in the matter and accordingly cannot examine the merits of the judgment, nor is it possible to accept any proof against it<sup>(52)</sup>. The same principle applies to the enforcement of foreign arbitral awards.

Similarly, according to Articles (2) and (3) of the Iraqi Act No. 30, a foreign judgment may not be enforced in Iraq unless a so called "enforcement decision" is given by an Iraqi competent court. To receive such a decision, an application in the form of a statement of claim must be submitted to the First Instance Court (Al-Bida'ya) in the place in which the judgment debtor has his domicile, or, if he has no domicile in Iraq, in the place where his property can be levied upon. This would suggest that a foreign judgment is not enforceable in Iraq where the judgment debtor has neither a domicile nor a property therein<sup>(53)</sup>, which is the same under Jordanian Law. The action will then be subject to the procedural rules applicable to every civil action in general, except where the Act No. 30 provides otherwise. An example of this is Article (9) of the Act which says that an "enforcement decision" issued by the (Iraqi) Court of First Instance (Bida'ya) in absentia may be appealed to Court of Cassation directly which constitutes the third and final stage of trial in Iraq. In such decisions, therefore, the defendant will necessarily lose his right to resort the Court of Appeal which is the second stage of trial<sup>(54)</sup>. Finally, the power given to an Iraqi court relating to enforcement is as the same as in Jordan Law. While it has no power to examine the merits of a foreign judgment, its role is confined to examining whether the condition for enforcement are met, and if so it is bound to grant a judgment to this effect<sup>(55)</sup>.

---

(50) In this respect, it was held that a judgment rendered by a Lebanese court is not self – enforceable in Jordan but there should be a Jordanian court judgment enforcing it (Civil Cassation 16/73, Bar Association Journal, 1973, p 227).

(51) Civil Cassation 16/73, Bar Association Journal, 1973, p 227).

(52) Civil Cassation 30/71, Bar Association Journal, 1971, p 915.

(53) Cf., Naddawi, op. cit, p 154 where he says that Article (41) of the code of Civil procedure may be applied in these circumstances. It provides that where the defendant has no domicile in Iraq, the action may be brought to the competent court at the place at which the plaintiff has a domicile or, if the latter has no domicile in Iraq, to the Court of Baghdad.

(54) See Articles (185) and (203) of the Code of Civil Procedure.

(55) See Naddawi, op. cit, p 157, 160.

As to Riyadh Convention, Article (31/b and 34) provides that procedural laws of the Contracting State where enforcement is sought apply to the process of enforcement unless the Convention provides otherwise. The following documents shall be annexed to the request for enforcement.

- A:** A duly ratified copy of the judgment.
- B:** A certification that the judgment is final unless this is stated in the judgment itself.
- C:** A duly ratified certificate to the effect that the judgment was notified to the judgment debtor and if it was made in absentia, a certificate that he was duly notified during the proceedings.

To enforce an arbitral award, Article (37) of the Convention provides that a duly ratified copy of the award as well as a certificate from the “judicial authority” to the effect that it is already enforceable, must be submitted to (the court of) the Contracting State from which the enforcement is required. Clearly, words as such are vague and may lead to different interpretations. However, it is most probably that the Convention means that an award must be enforceable in the State of origin, and a certificate to this effect has been given by the competent court in the State.

According to Article (32) and (37), the role of the court before which the request for enforcement is submitted is confined to verifying whether the conditions provided for under the Convention are met. It has no power to re-examine the dispute or the merits of the judgment itself. As way indicated, a similar rule is applicable in both Jordanian and Iraqi Law.

The Convention contains another provision which has no counterpart in either Iraqi or Jordanian Law. Article (32) provides that where a judgment is able, by its very nature, to be divided, the request for enforcement may be related to a part of it only. It seems that this rule faces the situation may be related in which the judgment, for any reason, is partially and not wholly enforceable. For instance, a part of a judgment may be against Public Order or Shari'a according to the understanding of the State in which the judgment to be enforced, while other parts are not. Suppose in this case that the subject matter of the judgment was payment of a certain sum with interest, and the judgment was submitted to a Contracting State for enforcement, while it does not allow interest. In such a case, the request may be limited to the original sum only without the interest. A solution as such, as submitted, seems to be reasonable and practicable.

### **Conclusion**

It is clear from the above discussion that there is a great similarity between Jordanian and Iraqi Laws concerning the requirements for enforcement of foreign judgments. These requirements, however, relate to the nature of a foreign judgments. These requirement, however, relate to the nature of a foreign judgment, jurisdiction, notification, fraud, public order, reciprocity and national proceedings. On the other hand, while the question of foreign awards is disputable in Iraq, it is decisively solved in Jordan where they are treated as the same as foreign judgments. Much less similarity exists between these two laws, as one group, and the Riyadh Convention which, however, has not yet been accepted by 10 of the Arab Countries though about six years passed since it came into existence in 1983, and about four

years since it was ratified by the Council of the Arab Ministers of Justice in 1985. It is remarkable that of these countries are the Gulf countries excluding Iraq.