

The Authority Responsible Competent for Implementing Enforcement a Foreign Judicial Decision in Accordance with the Provisions of the Iraqi Court of Cassation

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Received Date: 1/5/2025. Accepted Date: 2/6/2025. Publication Date: 20/6/2025.



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Abstract

A foreign judicial ruling is not executed outside the territory of the court of the country that issued it by enforcement of law, but its implementation requires the intervention of the judicial or administrative authority in the requested state in respect of the principle of independence and sovereignty of the country. The latter undertakes the task of bringing down the ruling to apply repetition that benefits from the ruling issued in his service, and countries differ in determining the procedures followed to implement the foreign judicial ruling as well as they differ in determining the authority responsible for implementing a foreign judicial ruling. In Iraq, the Iraqi Court of Cassation hesitated in its successive provisions to determine the authority responsible for implementing a foreign judicial ruling, sometimes making this task the responsible of the Court of First Instance, which requires the interested party to establish a lawsuit for the purpose of implementing the ruling, and sometimes making the task of implementing the foreign judicial ruling of the responsibility of the implementation department to issue an implementation order, especially if the country from which the foreign judicial ruling

was issued is a member of the Riyadh Convention on Judicial Cooperation of 1983.

Keywords: Foreign Judicial Ruling, Court Of Cassation, Court Of First Instance, Implementation Department, International Conventions.

الجهة المختصة المسؤولة عن تنفيذ الأحكام القضائية الأجنبية وفقاً لأحكام
محكمة التمييز العراقية

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تاريخ الاستلام: 2025/5/1. تاريخ القبول: 2025/6/2. تاريخ النشر: 2025/6/20.

المستخلص

لا يُنفذ الحكم القضائي الأجنبي خارج نطاق سلطة المحكمة في الدولة التي أصدرته تلقائياً بموجب القانون، بل يتطلب تنفيذه تدخل السلطة القضائية أو الإدارية في الدولة المطلوبة، احتراماً لمبدأ استقلال وسيادة الدولة. وتتولى هذه السلطة مسؤولية تنفيذ الحكم ليتمكن المستفيد منه من تحقيق الغرض الذي صدر من أجله الحكم. وتختلف الدول في تحديد الإجراءات المتبعة لتنفيذ الأحكام القضائية الأجنبية، كما تختلف في تحديد الجهة المختصة بتنفيذ هذا الحكم.

في العراق، ترددت محكمة التمييز العراقية في أحكامها المتعاقبة في تحديد الجهة المختصة بتنفيذ الحكم القضائي الأجنبي، حيث أجازت أحياناً أن تكون هذه المهمة من صلاحية محكمة البداية، مما يتطلب من الطرف المعني إقامة دعوى بغرض تنفيذ الحكم، وأحياناً أخرى منحت هذه الصلاحية إلى دائرة التنفيذ لإصدار أمر تنفيذ، خاصة إذا كانت الدولة التي صدر منها الحكم الأجنبي عضواً في اتفاقية الرياض للتعاون القضائي لعام 1983.

الكلمات المفتاحية: الحكم القضائي الأجنبي، محكمة التمييز، محكمة البداية، دائرة التنفيذ، الاتفاقيات الدولية

* مدرس

Introduction

First: The Importance of Research

The judicial ruling is the cornerstone of the law. Its function is to embody the legal base on the ground, and it is obvious that if this ruling is not implemented, there is no benefit from issuing it, the implementation of judicial rulings within the territory of the country that issued the ruling does not raise any problems. However, the problem arises when a country receives a judicial ruling issued in the name of the sovereignty of a foreign country and the concerned person wishes to implement it on its territory, and countries find it difficult to reconcile the idea of independence and sovereignty on the one hand, and the necessities of trade and international courtesies on the other.

Referring to the legislative history of the implementation of foreign judicial rulings, we find that the law on the implementation of foreign provisions in Iraq No. (30) at 1928 has determined the mechanism for the implementation of provisions issued by the courts of other countries, as well as the Riyadh Arab Convention for Judicial Cooperation of 1983, which entered into implementation at 30/10/1985¹, in accordance with article (62). The convention is obligatory on all its members because of it represents a law for the members that two or more members may not agree on contrary in any way, and this convention also specified the mechanism for the implementation of foreign provisions of member country, and despite this rich legislative history, Iraq is so far striving to join the Hague Convention for the Recognition and Implementation of Foreign provisions of 2019.

Second: The Research Problem:

Through the application of the provisions of international conventions on the implementation of foreign provisions in Iraq

as well as internal legislation appears the problem of research. It is clear to us that there is a gap in determining the authority responsible for the implementation of the judicial ruling issued by the countries joining the Riyadh Convention on Judicial Cooperation in 1983, which requires the judiciary to appeal to his opinion and diligence in an attempt to fill this deficiency through the flexible interpretations of some of the texts of the conventions. Therefore, we will address in this research the position of the Iraqi judiciary represented by the Court of Cassation, which fumbled its decisions in determining the authority responsible for the implementation of the foreign judicial ruling.

Third: Methodology:

As for the methodology, we followed the descriptive analytical approach in explaining the procedures followed in the implementation of the foreign judicial ruling and the position of the Riyadh Arab Convention for Judicial Cooperation of 1983 and the Convention on the Recognition and Enforcement of Foreign provisions in Civil and Commercial Matters held in The Hague for the year 2019, as well as extrapolating and commenting on the decisions of the Iraqi Court of Cassation in this regard.

Fourth: Research Plan:

In order for the study to success, we will divide our research into two sections, the first section we will allocate in the procedures followed in the implementation of the foreign judicial ruling, which in turn will be divided into two requirements, the first requirement in the case of the implementation of the foreign ruling, the second requirement will be about the ruling in the case of the implementation of the foreign ruling. The second section we will devote it to the implementation of the foreign judicial ruling in accordance with the provisions of the Iraqi Court of

Cassation, which will be divided into two requirements, the first entitled Court of First Instance that is the authority responsible to implement the foreign judicial ruling and the second entitled implementation department which it is the authority responsible to implement the foreign judicial ruling. Finally we will show our chosen opinion on the above subject.

The First Section

Procedures Followed in the Implementation of a Foreign Judicial Ruling

A foreign judicial ruling is defined as the decision issued by a foreign judicial authority responsible that settles a private law dispute, must implementation in respect of what is adjudicated². This means that the implementation of the judicial ruling in a country other than the country that issued it is not direct, but there are procedures that must be taken into account for those who want to implement the foreign judicial ruling for their benefit, and so that the implementation of the foreign ruling is not random without organization, national laws and international conventions have regulated the procedures that the claimant must follow the implementation of the foreign ruling, equally did international conventions such as the Riyadh Convention on Judicial Cooperation and the Hague Convention on the Recognition and Implementation of Foreign provisions.

The procedures followed by countries to implement the foreign judicial ruling vary according to their own laws, so the request for the implementation of the foreign ruling can only be accepted by following the legal procedures of that country³. The first of those procedures in Iraqi law is to establish a lawsuit before the responsible court and the issuance of a ruling by that court to implement the foreign judicial ruling, the first of these procedures in Iraqi law is to establish a lawsuit in the responsible court and

the issuance of a ruling by that court to implement the foreign judicial ruling, and this has been required in Article (2) of the Iraqi foreign provisions implementation law, which states that (the foreign ruling may be implemented in Iraq in accordance with the provisions of this law by a decision issued by an Iraqi court called (implementation decision)). If the ruling is issued in the case of the implementation of the foreign ruling raises the question of whether it is possible to appeal that ruling, and to indicate those procedures we will divide our research this into two requirements, the first requirement we will allocate in the case of the implementation of the foreign judicial ruling, either the second requirement will be in the ruling in the case of the implementation of the foreign ruling.

First Requirement

Implementation of Foreign Ruling Lawsuit

Article (3) of the Iraqi Foreign provisions implementation law states that (those who want to implement a foreign ruling must establish a lawsuit with the Court of First Instance to issue an (implementation decision), and this means that the first step that those who want to implement the foreign judicial ruling must follow is to establish a lawsuit. The lawsuit for the implementation of the foreign judicial ruling is a civil lawsuit of a special case, because the foreign court that issued the ruling has decided on the dispute before it and issued the final ruling, and therefore the role of the responsible court to consider the lawsuit for the implementation of the foreign ruling is limited to verifying the availability of the conditions for the implementation of the foreign ruling without delving into the merits of the ruling in terms of subject⁴. Article (4/2) of the Hague Convention on the Recognition and Enforcement of Foreign Provisions in 2019 provides in this sense, which states (the subject matter of the

ruling may not be reviewed in the country of implementation, the subject matter of the ruling may only be reviewed to the extent necessary for the application of this convention).

The question arises in this regard whether it is possible to submit new applications when states a lawsuit for the implementation of the foreign ruling, part of the jurisprudence considers that any new requests should be rejected, whether submitted by the plaintiff or the defendant, because the submission of new applications would affect the content of what was ruled by the foreign ruling. Another aspect of jurisprudence sees the possibility of submitting new applications that have not been decided by the foreign ruling as they are related to the subject of the original lawsuit decided by the foreign ruling⁵. We believe that not allowing the responsible court to consider the implementation of the foreign ruling to consider additional requests in the subject matter of the original lawsuit is an incorrect opinion because the lawsuit for the implementation of the foreign judicial ruling is a lawsuit of a special case and that the role of court, as we mentioned above, is limited to verifying the availability of the conditions for the implementation of the foreign ruling in accordance with the provisions of its own laws without delving into any other objective aspect related to the foreign ruling to be implemented. As for the responsible court qualitatively to consider the case for the implementation of the foreign judicial ruling, Article (3) of the law on the implementation of foreign Judgments has ruled that the Court of First Instance is the authority responsible to consider this lawsuit, as stated in the second paragraph of Article (31) in the Riyadh Convention for Judicial Cooperation that "the procedures for recognizing the ruling or its implementation are subject to the law

of the contracting party required to recognize the ruling, to the extent provided for in the convention."

As for the member to the lawsuit, the litigants in the lawsuit for the implementation of the foreign ruling are the same litigants in the original lawsuit in which the judgment was decided, and it is not a condition that the plaintiff provides a lawsuit for the implementation of the foreign judicial ruling. It may be provided by the defendant in the original lawsuit as long as he has an interest in the implementation of the ruling⁶, and the lawsuit petition includes all the data stated by the Iraqi civil procedure law⁷, they are: the name of the court before which the lawsuit is stated, the date of writing the petition, the name of both the plaintiff and the defendant, his surname, profession and place of residence. If the defendant does not have a known place of residence, the last place in which he was, a statement of the place chosen by the plaintiff for the purpose of notification, a statement of the subject matter of the lawsuit, if it is movable, mention of its gender, type, value and descriptions, and if it is a property, mention its location, boundaries, location, number or sequence, the facts and evidence of the case, the plaintiff's requests and supports, and finally the signature of the plaintiff or his agent if the agent is authorized by a document certified by an authority responsible.

Article (3) of the Iraqi foreign provisions implementation law also required those who want to provide a lawsuit for the implementation of the foreign judicial ruling to accompany with the request a copy of the foreign ruling required to be implemented suitably certified with a statement of its reasons, with a suitably certified copy of its translation if the ruling is in Arabic⁸, and with regard to the spatial authority responsible of the court, with reference to Article (3/b) of the Iraqi foreign

provisions implementation law, the responsible court to consider the lawsuit is the court located in the place in which the convict resides. If he does not have a fixed place of residence in Iraq, in the place where the money is required to be seized, and then the Court of First Instance sets a date for pleading and brings the convict, whether inside or outside Iraq⁹.

With regard to foreign provisions to temporary implementation, paragraph (b) of Article (8) of the law on the implementation of foreign provisions obligated the court, if the convict proves that he has the right to review a higher court and has reviewed it or that he wants to review it in accordance with the rules, to postpone consideration of the case until the end of the transaction in that court, and also gave the same article to the court, if necessary, to order the placement of precautionary detention after taking a guarantee from the convict if there is no objection to the ruling.

Second Requirement Judgment in the Case of Implementation of the Foreign Ruling

The lawsuit for the implementation of the foreign judicial ruling is a civil lawsuit of a special case, as we mentioned earlier, and therefore the aim of issuing the ruling in this lawsuit is to give the foreign judicial ruling implementing enforcement, unlike the other lawsuit, whose goal is always to establish or prove a legal situation and are usually associated with commitment to a certain order¹⁰. Therefore, the ruling that will be issued in the case for the implementation of the foreign judicial ruling takes one of the two forms stated in Article (5) of the Iraqi foreign provisions implementation law, saying, "The court shall issue the implementation decision or reject the request to issue it in accordance with the provisions of this law, after completing the pleading."

The first Picture: Granting The Order to Implement the Foreign Judicial Ruling:

If the judge required to implement the foreign judicial ruling is sure that the conditions for the implementation of the judicial ruling are met as stated in his national law and international conventions, he issues an order for implementation, and this order gives the foreign judicial ruling implementing enforcement throughout the country to which the implementation is requested, and there are those who consider that the judge may grant the debtor a period to fulfill the obligation, If the payment is in foreign currency, the implemented can be obliged to pay in the national currency, provided that the transfer is made on the basis of the exchange rate on the day of payment¹¹, while another side of jurisprudence considers that the judge cannot give the debtor a period of time to pay nor any authority responsible to determine the payment in national or foreign currency¹².

The question arises in this regard whether the judge can allow the implementation of a certain part of the ruling when he meets the conditions for the implementation of the foreign ruling, referred to this case Article (32) of the Riyadh Convention for Judicial Cooperation by saying "... Article (9) of the Hague Convention on the recognition and implementation of foreign provisions of 2019 stated that "recognition or implementation of a severable part of the ruling shall be made whenever recognition or implementation of that recognizable or implementation part of the ruling is requested in accordance with this Convention." It is understood from these texts that the judge can order the implementation of a certain part of the foreign ruling, but provided that that part meets the conditions for the implementation of the foreign ruling and that part is separable from the rest of the parts of the ruling.

The Second Picture: Refusal to Implement the Foreign Ruling: Article (8) of the Iraqi foreign provisions implementation Law, which gave the court the authority responsible to dismiss the case for the implementation of the foreign ruling and refuse to implement it in the following cases:

1. If the convict proves that the ruling has been obtained by fraud.
2. The conduct of the case in the foreign court has been contrary to justice and fairness .
3. If the court finds that the ruling does not meet all the conditions of Article (6).

Article (30) of the Riyadh Convention on Judicial Cooperation also referred to several cases of refusal to recognize the implementation of a foreign ruling, which can be summarized as follows:

1. If the ruling is contrary to the provisions of Islamic Shariah or the provisions of the Constitution or public order or morals in the country required to implement the foreign ruling.
2. If the judicial ruling is in absentia and the convicted person does not announce the lawsuit or ruling a valid declaration that enables him to defend himself.
3. If the ruling does not observe the rules of law of the country to which recognition is requested relating to the legal representation of incompetent or deficient persons.
4. If the dispute in which the ruling was issued is the subject of another dispute between the litigants themselves and relates to the same right, object, cause and possess the enforcement of res judicata, or subject to another lawsuit pending in the courts of the contracting party to which recognition is requested on a date prior to the submission of the dispute to the court of the party that issued the ruling¹³.

As for the extent to which it is possible to appeal the ruling of the implementation order, the ruling issued in the case of the implementation of the foreign ruling, like other judicial provisions, can be challenged by all ordinary and extraordinary processes of appeal stated in the Iraqi code of procedure¹⁴ if the ruling is issued contrary to justice and fairness or issued based on fraud, and the ruling can be appealed in absentia if the Court of First Instance issued the ruling with the absence of the required implementation of the foreign ruling against him. Article (9) of the Iraqi implementation law referred to this by saying, "Decisions in absentia issued by the Court of First Instance under this law shall be subordinate to the provisions related to the objection, but they shall not be subject to appeal, but rather to cassation in the Court of Cassation."

The Second Section

Implementation of Foreign Ruling In Accordance With the Provisions of the Iraqi Court of Cassation

The Iraqi Court of Cassation hesitated to determine the authority responsible to implement the foreign ruling after the issuance of the order to implement it by the Court of First Instance to two directions: the first direction of the Court of Cassation (the expanded authority), which goes to the responsible of the Court of First Instance in the implementation of the foreign judicial ruling, and the second direction of the Court of Cassation (Civil authority), which goes to the responsible of the implementation department to implement the foreign ruling without the need to issue a judicial ruling, We will show these two trends in two separate requirements and then show our chosen opinion on the subject above.

First Requirement

The Court of First Instance is the Authority Responsible to Implement the Foreign Judicial Ruling

Civil courts have general authority over all natural and legal persons, including the government¹⁵, and in order to specialize in considering a type of dispute, it is possible to establish specialized courts entrusted with the adjudication of disputes of a special case, and these courts are the Court of First Instance, whose authority responsible was determined by the Iraqi Code of Civil Procedure No. (83) in 1969 as follows¹⁶:

1. Specific Authority: The Court of First Instance shall have the responsible of the last cassation to hear the following cases: a- Debt and movable lawsuits whose value does not exceed five hundred dinars. B- Lawsuits for removing commonality in real estate and movable, regardless of the value of each. C- A lawsuit for the evacuation of the leased property, regardless of the amount of the rent. d- A lawsuit of possession and a request for compensation therefor if it is filed accordingly and the value of the compensation do not exceed five hundred dinars. e- Lawsuit for installments due from the debt in installments, provided that its amount does not exceed five hundred dinars, as well as the remaining debt if it is five hundred or less, but if the lawsuit is directed to prove the origin of the debt that exceeds the mentioned amount, the lawsuit shall be referred to the authority responsible court of first instance. f. Lawsuits for which other laws provide for the authority of the Court of First Instance.
2. The original authority of the court: The first instance is subject to appeal and cassation a- Lawsuits whose value exceeds five hundred dinars. b- Lawsuits related to a flat fee. c- Lawsuits of indeterminate value, each lawsuit whose value exceeds one

thousand dinars. d- Bankruptcy lawsuits. e - Lawsuits for the liquidation of companies.

3. The authority of the Court of First Instance to consider urgent matters, including urgent matters that are feared to be the lapse of time, as well as orders on petitions.
4. Authority to consider personal status articles for non-Iraqi Muslims and foreigners whose personal status is applied to the Civil Code and its decisions are issued a final degree that is subject to cassation before the Federal Court of Cassation.

Through the previous legal texts, it is clear that the authorities of the Court of First Instance include all civil matters as well as some commercial matters and personal status materials for non-Iraqis¹⁷, and therefore the implementation of a judicial ruling issued by a foreign country in Iraq is implemented by issuing a judicial ruling from the Court of First Instance, and this is the direction of the expanded body of the Iraqi Court of Cassation, which made the Court of First Instance the authority judicial responsible to implement the foreign judicial ruling, including those decisions:

1. The ruling of the expanded authority of the Federal Court of Cassation on 25/2/2009¹⁸ (The Court of First Instance is authority to consider issuing the decision to execute judgments issued by foreign courts pursuant to the provision of Article (3) of the Law on the implementation of foreign Courts provisions No. 30 of 1928, even if the ruling required to be implement is issued by the personal status courts).
2. The ruling of the expanded authority of the Federal Court of Cassation on 17/10/2017¹⁹ (the Court of First Instance is the one where the lawsuit is filed regarding the request for the implementation of the foreign ruling, even if it is issued in personal status cases, provided that the Court of First Instance

takes into account the conditions stated in Article (6) of the Law on the implementation of foreign provisions in Iraq No. 30 of 1928 when considering the request to accept the implementation of the ruling to be implement).

It is clear to us from the previous provisions of the Court of Cassation that it made the Court of First Instance the authority responsible to issue an order for the implementation of the foreign judicial ruling, causing this to be that the Law on the Implementation of Foreign Courts provisions in Iraq No. 30 of 1928 has been specified in Article III thereof (filing a lawsuit on the implementation of the foreign ruling with the Court of First Instance to issue an implementation decision).

In addition, Article (31) of the Riyadh Arab Convention for Judicial Cooperation went to the fact that the procedures for recognizing the ruling or its implementation are subject to the law of the contracting authority required to recognize the ruling within the limits where the convention does not provide otherwise, and where the convention did not contain the type of court that issues the decision to implement, the implication is that it refers to Iraqi law, which is (the Law of implementation of foreign provisions), which determined the Court of First Instance as a court responsible to issue the decision to implement, so it is as a general principle that the court The first instance is the one where the lawsuit is filed regarding the request for the implementation of the foreign ruling, even if it is issued by the Personal Status Court, but this is subject to taking into account the availability of the conditions mentioned in Article (6) of the aforementioned law, and whether the provisions issued by the personal status courts meet the conditions of the said article or not, this is up to the Court of First Instance.

Second Requirement

The Implementation Department is Responsible to Implement the Foreign Judicial Ruling

The implementation department is one of the departments of the Ministry of Justice with directorates spread throughout Iraq and these directorates apply the provisions of the implementation law No. (45) 1980 amended code, through which it seeks to preserve the rights of the state and citizens through easy procedures and encourage citizens and educate them to deal in the spirit of consensual implementation of the provisions and executive documents and respect the rule of law to ensure the stability of rights and legal transactions between them in order to achieve the goals of national development²⁰.

It should be noted that the Iraqi implementation law applies to the following matters²¹:

First: Implementing provisions and documents.

Second: Foreign provisions Implementation in Iraq, in accordance with the Law on the implementation of foreign provisions, taking into accounts the provisions of applicable international conventions in Iraq.

Third: Other matters to which the laws stated the applicability of the implementation Law.

This means that the implementation of foreign provisions in Iraq according to the above is done by the implementation department directly without the need for an order of implementation by the Court of First Instance, and this is the direction of the civil authority of the Iraqi Court of Cassation, which issued several decisions that made the foreign ruling implement as long as the country that issued the foreign ruling is a member of the Riyadh Convention for Judicial Cooperation, and among those decisions:

1. The ruling of the Civil Authority of the Federal Court of Cassation on 30/7/2009²² (found that the ruling is correct and in accordance with the law for the reasons on which it was based, as the ruling to be implemented in Iraq issued by the United Arab Emirates, which is among the signatories to the Riyadh Convention ratified by Law No. 110 of 1984, so the ruling is implement in Iraq, without the need to issue an implementation decision from an Iraqi court).
2. The ruling of the Civil Authority of the Federal Court of Cassation on 24/1/2022²³ (the foreign ruling issued by a state party to the Riyadh Convention is implement without the need to issue a ruling giving it implementing enforcement).

Through extrapolation of the above judicial decisions, it is clear to us that the Court of Cassation looks at the implementation of the foreign ruling in terms of putting the ruling into effect so that the convict is enforced to perform what was sentenced to the convict in a country other than the one whose court issued this ruling, as the subject of the implementation order is to grant the implementing enforcement of the foreign ruling in the state of the judge required to implement, and thus differs from the lawsuit whose owner aims to obtain judicial protection regarding a disputed legal status. Therefore, as the implementation order has nothing to do with the subject matter of the dispute, but rather with the judgment itself, if the foreign ruling to be implemented is issued by a court of a country party to the Riyadh Convention, it can be implemented directly without the need for an implementation decision from the Iraqi court.

Selected Opinion:

By extrapolating the aforementioned judicial decisions of the Iraqi Court of Cassation regarding the authority responsible for the implementation of the foreign judicial ruling and the provisions of the Riyadh Convention on Judicial Cooperation of 1983 and the Hague Convention of 2019²⁴, we reached the chosen opinion in this regard, which can be summarized in the following paragraphs:

1. The Riyadh Convention for Judicial Cooperation in accordance with Article (32) provides for the possibility of dividing the implementation of the foreign judicial ruling upon implementation by the concerned authority (the subject of the research), which requires that this authority has the ability and possibility to do so, whether technically or objectively.
2. International conventions for the implementation of foreign judicial provisions require several conditions, including the Riyadh Convention for the implementation of foreign judicial ruling and the Hague Convention for the recognition and implementation of foreign judicial provisions, and with reference to these conditions, we find the most prominent of which is that the foreign judicial ruling²⁵ does not violate public order and morals from the country required to implement²⁶, which also requires that the authority required to implement the foreign ruling has the ability and judicial knowledge consistent with the provisions of public order in the state and does not violate them. In addition to the condition of reciprocity²⁷, which requires the entity required to implement official authority from the Iraqi Ministry of Foreign Affairs to determine the

extent of compliance of the country that issued the foreign ruling to this condition or not.

3. Perhaps it is worth mentioning that we put forward a comparison between the expanded authority and the civil authority of the Court of Cassation through the presentation of the judicial organization of each of them stated in the Judicial Organization Law No. (160) of 1979, as Article (13 / first / b) stated the composition of the expanded authority, which is held under the chairmanship of the President of the Court of Cassation or the most senior of his deputies in his absence or the existence of a legal impediment to his participation in it and the membership of at least ten of its judges and either for its responsibility.

The above article stated that the expanded authority shall have responsible to consider the following:

1. The dispute over the implementation of two rulings acquired the degree of contradictory competent issued in one subject if it is between the litigants themselves, and one of the two rulings is likely and it is decided to implement it, without the other ruling, and the President of the Court of Cassation may suspend the implementation of the two contradictory rulings until the issuance of the discriminatory decision.
2. The dispute over the assignment of responsible in the lawsuit between two courts.
3. Provisions and decisions referred to it by the President for decision occur within the responsibility of the Court in accordance with the law under which such provisions and decisions were issued. As for the Civil Authority, it is stated in Article (13 / first / c) of the above law and is responsibility to consider provisions and decisions issued in

civil lawsuits and other miscellaneous articles issued in accordance with the provisions of the law. It becomes clear to us through the presentation of the responsibility of the expanded authority and the civil authority of the Court of Cassation that the predominance and the most correct opinion is for the first (the expanded authority), which made the implementation of the foreign judicial ruling of the responsibility of the Court of First Instance.

4. The statement that the implementation decision can be issued by the implementation department for the member countries of the Riyadh Convention indicates ignoring or extending the provisions of the Riyadh Convention, which went to make the issue of recognition and implementation of the foreign ruling within the responsible of the law of the country required to recognize the ruling or its implementation within the limits where the Convention does not provide otherwise²⁸.
5. With reference to Articles (113, 114 and 115) of the Iraqi Implementation Law No. (45) of 1980, we find that the judicial ruling loses its implementing enforcement after a period of (7) years from its issuance, which requires the establishment of a new lawsuit to restore its implementing enforcement called a lawsuit (renewal of implementing enforcement) and requires a lawsuit to renew the implementing enforcement the availability of special conditions when it is available in which it has become possible to establish it before the responsible court, which is the need for a judicial ruling and a period of (7) years has passed since the acquisition of the ruling the degree of competent or leaving it without a legitimate excuse, and not to deposit the ruling required to renew its implementing

enforcement in the competent implementation directorate, as well as the lack of a long limitation period on the judgment required to renew its implementing enforcement and the normal situation of the ruling issued in any lawsuit is the implementation of its content by the responsible authority so, and the renewal lawsuit is distinguished from other lawsuits as a lawsuit aimed at upholding a previous ruling and that the ruling that is implemented is the original ruling and not the ruling issued by renewal²⁹.

The law has been silent on the organization of the procedures of this lawsuit and its requirements, which we believe that the authority to consider it is the responsibility of the (Court of First Instance), and by analogy with the implementation of the foreign judicial ruling required to be implemented, the statement that the implementation department is responsible to issue the implementation decision may put the ruling that has passed (7) years since its issuance in the misplaced, and obliges the interested party to file a lawsuit in the Court of First Instance.

6. Iraq concluded several bilateral conventions within the framework of judicial cooperation in the item of implementation of foreign provisions, including:
 - a. Convention on judicial, civil, criminal and commercial cooperation between the Kingdom of Iraq and the Republic of Turkey, ratified by Law 17 of 1947, as the first chapter of which is devoted to judicial cooperation in legal and commercial matters, which consists of (17) articles.
 - b. Convention on Mutual Assistance and Legal and Judicial Cooperation between the Republic of Iraq and the Republic of Egypt in 1964, Chapter three of which is

- devoted to the recognition of provision issued in the territory of one of the Contracting States, which consists of 13 articles, which were approved by Law No. 194 of 1964.
- c. The Convention on Judicial Cooperation between the Republic of Germany and the Republic of Iraq in Baghdad for the year (1970), Chapter three of which is devoted to the recognition and implementation of provisions issued in the territory of one of the Contracting States, which is (3) Articles.
 - d. Convention on Judicial and Legal Cooperation between the Republic of Iraq and Russia "Soviet Union", signed in Moscow in (1973), as Chapter three of it, which consists of (6) articles, is devoted to dealing with the issue of recognition and implementation of provisions.
 - e. The Convention on Judicial and Legal Cooperation between the Republic of Iraq and the Republic of Hungary, signed in Budapest in 1977, approved by Law (92) of 1977, and Chapter six of it, which consists of (5) articles, is devoted to the recognition of provisions issued in the territory of one of the two countries.
 - f. Convention on Legal and Judicial Cooperation between the Republic of Iraq and the Republic of Poland, signed in Baghdad (1988).
 - g. Convention on Legal and Judicial Cooperation between the Republic of Iraq and the Republic of Turkey concluded in Ankara on (1989) and approved by Law No. 41 of 1990.
 - h. Convention on Legal and Judicial Cooperation in Civil and Personal Status Matters between the Republic of

Iraq and the Iranian Government, signed in Tehran on 24/4/2011, and ratified by Law No. (92) in 2012.

All the above-mentioned conventions can be used in the matter of the implementation of foreign judicial rulings.

7. The statement that the implementation department is the authority responsible to implement the foreign ruling carries with it doubt and suspicion that the judicial authority is more knowledgeable and familiar with the national and foreign judicial rulings, and the Court of Cassation is the supreme judicial authority of the judiciary, especially when it exercises its original responsibility in achieving the biggest goal in repairing the defects that permeate the judicial provisions issued by the courts and the unification of jurisprudence and stability in complex legal matters to consolidate the sanctity of the judiciary and the law and ensure the interest of justice³⁰. It also audits judicial provisions to consolidate the legal base and unify the word for legal principles and to achieve justice in accordance with the law³¹.

For all of the above, it is likely that the Court of First Instance is the authority responsible to implement the foreign judicial ruling for the aforementioned reasons.

The End:

Through research and study of our research tagged (the authority responsible to implement the foreign judicial ruling in accordance with the provisions of the Iraqi Court of Cassation) we reached a number of conclusions and recommendations that we can summarize as follows:

First: Conclusions:

1. The lawsuit for the implementation of the foreign judicial ruling is a civil lawsuit of a special case, because the role of the court is limited to verifying the availability of the conditions for the implementation of the ruling for those who issued it in his favor without going into the merits of the ruling in terms of substance, and the Iraqi foreign provisions implementation law No. (30) of 1928 went to the implementation of the foreign ruling in Iraq be by a decision issued by an Iraqi court called (implementation decision), taking into account the provisions of international conventions signed by the Republic of Iraq, whoever wants to implement a foreign ruling must provide a lawsuit with the Court of First Instance to issue the implementation decision.
2. If the court issues a ruling to implement the foreign judicial ruling, it acquires implementing enforcement as the foreign judicial ruling is not implemented by enforcement of law, but its implementation requires the intervention of the judicial or administrative authorities to put it into effect.
3. The legislation of countries differs by determining the authority responsible for the implementation of the foreign judicial ruling acquired for the implementing enforcement, and there are many international conventions that regulate the issue of the implementation of judicial and foreign provisions, including those approved by the Republic of Iraq, perhaps the

most prominent of which is the Riyadh Convention on Judicial Cooperation of 1983, including what Iraq seeks to join because of its importance in international forums, most notably the Hague Convention for the implementation and recognition of foreign Judicial provisions of 2019.

4. The Iraqi Court of Cassation hesitated successive judicial decisions to determine the authority responsible for the implementation of foreign judicial rulings, sometimes the court goes in its expanded authority to make the Court of First Instance the owner of the responsibility to implement, and sometimes makes the responsibility up to the implementation department to issue an execution order without the need to provide a lawsuit in the Court of First Instance and this is the opinion of the civil authority of the Court of First Instance , In our chosen opinion, we preferred to what the expanded authority of the Court of Cassation went to that the implementation of the foreign judicial ruling is the competence and responsibly of the Court of First Instance for the aforementioned reasons and arguments.

Second: Proposals:

We recommend the Iraqi judiciary, represented by the esteemed Higher Judicial Council, to unify the opinion with regard to the authority responsible to implement the foreign judicial ruling and make the authority to implement it one of the responsibilities of the Court of First Instance, even if the foreign ruling is issued by a member state of the Riyadh Convention for Judicial Cooperation of 1983, because the implementation of the foreign ruling requires knowledge and acquaintance in the matter of judicial rulings, and therefore the judicial authority is the optimal and likely authority in the implementation of the foreign judicial ruling.

Endnotes

1. The Riyadh Arab Convention for Judicial Cooperation signed in Riyadh on 6/4/1983 was held to document the existing cooperation relations between Arab countries in the courts and judicial fields and work to support and develop them, the Council of Arab Ministers of Justice has approved in its first complex session in the Kingdom of Saudi Arabia Riyadh for the period from 4 to 6 April 1983, the Riyadh Arab Convention for Judicial Cooperation, It was approved by Iraq on 16/3/1984. <https://www.iraqidevelopers.com/iraqfsc/ar/node/148> .
2. Dr. Ahmed Abu Al-Wafa, Implementation Procedures in Civil and Commercial Matters, Knowledge Foundation, Alexandria, Egypt, 2000, p. 213.
3. Hassan Al-Haddawi, Private International Law (Conflict of Laws, General Principles and Positive Solutions in Jordanian Law), A Comparative Study, Second Edition, Dar Al-Thaqafa, Publishing and Distribution Library, Jordan, 2001, p. 283.
4. Haneen Faeq Hussein, International Cooperation in the Framework of Recognition and Implementation of Foreign Judicial provisions in Civil and Commercial Matters, Master Thesis, University of Baghdad, College of Law, 2022, p 124.
5. Ahmed Abdel Nour, Problems of the implementation of foreign provisions (a comparative study), Master's thesis, Abu Bakr Bakaid University, Tlemcen, Algeria, 2009, pp. 107, 108.
6. Fouad Abdel Moneim Riad, Samia Rashid, Mediator in conflict of laws and conflict of international responsibility, Dar Al-Nahda Al-Arabiya, Cairo, 1987, p. 482.
7. Article (46) of the Iraqi Code of Civil Procedure.
8. Article (12) of the Hague Convention on the Recognition and implementation of Foreign provisions and Article (8) of the Riyadh Convention on Judicial Cooperation also referred to this.
9. Article (4) of the Iraqi Foreign provisions implementation Law.
10. Manal Bou Karsh, Hanan Basakalia, Implementation of foreign ruling, its authenticity and guarantees, Master's thesis, Faculty of Law and Political Science, University of May 8, 1945, Guelma, Algeria, 2022, p. 34.
11. Ahmed 'Abd al-Nur, pervious reference., p. 113.
12. Hisham Ali Sadek, Conflict of International responsible, University Press, Alexandria, Egypt 2002, p 301.
13. Corresponding to Article 9 of the Hague Convention on the Recognition and Implementation of Foreign provisions.
14. Article (168) of the Iraqi Code of Civil Procedure.
15. Article (3) of the Judicial Organization Law No. (160) of 1979.

16. Article (32) of the Iraqi Code of Civil Procedure.
17. Ibrahim Al-Mashahi, Legal Principles in the Judiciary of the Court of Cassation, Civil Procedures Section, Al-Jahidh Press, Baghdad, 1990, p. 10.
18. Ruling of the Federal Court of Cassation (Expanded Authority), ruling No. (50) of 2009.
19. Ruling of the Federal Court of Cassation (Extended Authority), ruling No. (286) of 2017.
20. Article (1) of the Iraqi Implementation Law.
21. Article (3) of the Iraqi Implementation Law.
22. Ruling of the Federal Court of Cassation (Civil Authority) / ruling No. 573 of 2009.
23. Ruling of the Federal Court of Cassation (Civil Authority), Ruling No. 3281 of 2022.
24. The Hague Convention is an international treaty concluded at the Hague Conference on Private International Law, and jurists consider it one of the most comprehensive convention in the field of implementation of foreign provisions.
25. Articles (30 and 31) of the Riyadh Convention on Judicial Cooperation, and Article (7) of the Hague Convention on the Recognition and implementation of Foreign provisions.
26. Okasha Mohamed Abdel Aal, Private International Law, University Press, Alexandria, 2007, p. 629.
27. Salem Hammad Al-Mamdouh, The brief in Private International Law, a comparative study, 2006, p. 276.
28. Article (31/b) of the Riyadh Convention on Judicial Cooperation of 1983.
29. Judge Kadhem Abd Jassim Al-Zaidi, Renewal of the Enforcement of judicial rulings, article published on the website of the Iraqi Supreme Judicial Council at the following link: <https://sjc.iq/view.73320/>
30. Abdul Rahman Al-Alam, Explanation of the Civil Procedure Law, Part IV, Legal Department Publications, Al-Zahra Press, Baghdad 1990, p. 7.
31. Dhiaa Sheet Khattab, Al-Wajeez in Explanation of the Code of Civil Procedure, lectures for students of the fourth stage in the College of Law and Politics, Al-Mustansiriya University, Al-Ani Press, Baghdad, 1973, p 322.

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Third: Articles:

1. Judge Kadhém Abd Jassim Al-Zaidi, Renewal of the Enforcement of judicial rulings, article published on the website of the Iraqi Supreme Judicial Council at the following link: <https://sjc.iq/view.73320/>

Fourth: Laws and International Conventions:

A- Laws:

- I. Iraqi Foreign provisions implementation Law No. (30) of 1928.
- II. Iraqi Code of Civil Procedure No. (83) of 1969.
- III. Judicial Organization Law No. (160) of 1979.
- IV. Iraqi implementation Law No. (45) of 1980.

B- International Conventions:

- I. Judicial, civil, criminal and commercial cooperation convention between the Kingdom of Iraq and the Republic of Turkey of 1947
- II. Convention on Mutual Assistance and Legal and Judicial Cooperation between the Republic of Iraq and the Republic of Egypt of 1964.
- III. Convention on Judicial Cooperation between the Republic of Germany and the Republic of Iraq at Baghdad of 1970
- IV. Convention on Judicial and Legal Cooperation between the Republic of Iraq and the Russian Federation (Soviet Union), signed at Moskole (1973).
- V. Convention on Judicial and Legal Cooperation between the Republic of Iraq and the Republic of Hungary, signed in Budapest in 1977 .
- VI. Riyadh Convention on Judicial Cooperation of 1983.
- VII. Convention on Legal and Judicial Cooperation between the Republic of Iraq and the Republic of Turkey of 1989 .
- VIII. Convention on Legal and Judicial Cooperation in Civil and Personal Status Matters between the Republic of Iraq and the Government of Iran for the year 2012.
- IX. Hague Convention on the Recognition and Enforcement of Foreign provisions in Civil and Commercial Matters of 2019.

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