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THE IMPACT OF CONTRADICTIONS BETWEEN CIVIL JUDGMENTS AND ARBITRAL AWARDS ON THE PRINCIPLE OF STABILITY OF TRANSACTIONS (A COMPARATIVE STUDY: IRAQ, EGYPT, FRANCE)

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ABSTRACT

This study examines the impact of contradictions between judicial judgments and arbitral awards on the principle of stability of transactions. Such contradictions may lead to distrust in legal transactions and an increase in disputes, which negatively affect both the parties involved and the judicial system. The primary aim of this research is to identify and address this problem through a comparative analysis of the legal frameworks of Iraq, Egypt, and France. Adopting an analytical and descriptive method, the study explores the nature of contradictions in judgments, the legal value of the authority of judgments, and the criteria for prioritizing between conflicting rulings. The main findings reveal that the decisive criterion is the date of issuance of the judgment, and that contradictions arising from material errors are superficial and do not affect the validity of the judgment. In addition, preventive and remedial measures to avoid contradictions are discussed. Finally, the research offers proposals for improving Iraqi legislation, including the introduction of a general legal provision to resolve conflicts in judgments and judicial practices, as well as the establishment of preventive safeguards that empower courts to address contradictions independently, without requiring a request from the parties.

KEYWORDS: Civil Judgments, Arbitral Awards, Conflicting Judgments, Stability of Transactions.

1. INTRODUCTION

Throughout history, arbitration has been recognized as one of the most effective means of dispute resolution, particularly in the field of international commerce. Offering advantages such as speed, flexibility, and expertise, arbitration has earned a special place among economic actors. However, despite the growing formalization of arbitration and efforts within national and international law to support it, arbitral awards still require recognition and enforcement by the competent courts. This dependency—an important point of connection—gives rise to one of the most serious challenges in contemporary legal systems: contradictions between court judgments and arbitral awards.

Such a contradiction occurs when an award rendered by an arbitral tribunal conflict with a prior or contemporaneous court decision. This situation not only jeopardizes the parties' rights and leaves them in legal uncertainty, but also produces far-reaching harmful consequences. It undermines confidence in arbitration as an alternative dispute-resolution mechanism and, ultimately, harms the credibility of the entire judiciary. More importantly, this kind of conflict threatens the fundamental principle of the stability of transactions—the bedrock of trade and investment. If economic actors cannot rely on their contracts and agreements being protected equally and consistently by both arbitral tribunals and state courts, they will be discouraged from entering into long-term commitments.

In this article, we propose to examine this complex problem in depth. Our aim is to analyze the roots of such contradictions—which may stem from procedural divergences, differing legal interpretations, or even party misconduct—and to offer an analytical framework that reveals the direct and indirect effects of these conflicts on the stability and security of transactions. Finally, we will introduce and assess practical and legal remedies intended to strengthen coherence and coordination between these two important dispute-resolution systems.

1.1. The Concept and Nature of Civil Judgments and Arbitral Awards

A judicial judgment issued by a competent court is intended to embody truth and justice. However, if such a judgment contains internal contradictions, or if it conflicts with another judgment, it loses its enforceability. Contradictions within a judicial ruling constitute a procedural defect, which may appear in two ways: either as a contradiction

between the reasoning and the operative part of the judgment, or as a contradiction between the operative parts of two separate judicial decisions. A court judgment represents the most important stage in a dispute and constitutes the primary objective of the parties in order to secure their rights. It is the ultimate outcome of the litigation process, with the courts and procedural stages serving merely as instruments to reach that end. On the other hand, arbitration has increasingly gained importance as an alternative means of dispute resolution, particularly in commercial matters. For this reason, examining the nature of both types of rulings and comparing them is of essential importance. (*Al-Qada'*, 1998: 303)

1.2. The Nature of Civil Judgments and Arbitral Awards

1.2.1. The Concept of a Civil Judgment

A civil judgment is a final and conclusive decision issued by a competent court in accordance with the law, which fully resolves a dispute. Such a judgment is regarded as the embodiment of truth, aiming to provide a definitive resolution and to stabilize the legal status of the parties involved.

It is important to note that not every decision rendered by a court qualifies as a "judgment." Many judicial decisions, such as interim orders, provisional measures, and administrative directions, serve only protective or preliminary functions and do not bring an end to the substantive dispute. These measures merely pave the way toward the issuance of the final judgment but lack the essential elements and characteristics that give a judicial ruling its binding and authoritative status.

Therefore, in order to properly understand the nature of a judicial judgment, it must be distinguished from other types of court decisions, with careful attention paid to its elements, legal nature, and statutory foundations. (*Al-Hajaya*, 2005:227-272)

1.2.2. Characteristics Of a Civil Judgment

Issued by a Competent Court: Only decisions rendered by authorized judicial bodies are considered civil judgments. **Final Resolution of the Dispute:** A civil judgment must bring the dispute to a definitive conclusion, fully resolving the matter between the parties. **Written Form:** The judgment must be documented in writing and prepared in accordance with legally prescribed formalities. **Substance and Legal Protection:** The essence of a civil judgment lies in providing legal protection to the rights and interests in dispute. By applying the

law to the facts of the case, the judge issues a ruling that ensures enforceable judicial protection for the parties involved.

1.2.3. The Concept of an Arbitral Award

Arbitration is a legal mechanism with a distinct nature, arising from the parties' voluntary willingness to resolve their disputes through their own free will rather than resorting to formal courts. This method is based on the agreement of the parties to refer current or future disputes to one or more arbitrators, whose decision will be binding on them.

Agreement to arbitration can be established in two ways:

- A. **Before the Dispute Arises:** As a clause in the main contract governing the relationship between the parties.
- B. **After the Dispute Arises:** As a separate agreement to refer an existing dispute to arbitration. In either case, arbitration, as a consensual method, allows the parties to achieve a final and binding resolution of their disputes by relying on the authority and discretion of the arbitrator(s). (*Al-Enazi, 2006: 8*)

Types of Arbitral Awards:

- A. **Partial Awards:** These awards resolve only a part of the issues raised in the dispute, such as determining the jurisdiction of the arbitrator(s).
- B. **Final Awards:** These awards resolve the entire dispute completely and definitively.
- C. **Additional Awards:** These awards are issued to correct errors or address requests that were omitted from the final award.

1.3. Conflicts Between Civil and Arbitral Awards and Their Effect on Transaction Stability

The natural course of a legal dispute ends with the issuance of a final court judgment. However, unexpected events can sometimes interrupt this process. One such event is a conflict between judicial and arbitral decisions, which undermines transaction stability.

This conflict can take two main forms:

- A. **Internal (Intrinsic) Conflict:** Occurs within a single judgment, for example when the main ruling contradicts its reasoning.
- B. **External Conflict:** Arises when two independent judgments on the same matter contradict each other.

The judicial system is based on the principle of

“one judgment per dispute,” aimed at preventing repeated litigation and conflicting rulings. Respecting this principle ensures legal stability and trust in the judicial system. Therefore, conflicts, whether internal or external, violate this fundamental rule and can seriously harm the parties' rights and confidence in the judiciary. Such contradictions typically occur when a court issues a decision on a matter previously arbitrated, resulting in a conflicting outcome. (*Iraqi Civil Procedure Code, 1969/83, as amended*), (*Egyptian Code of Civil and Commercial Procedure, n.d.*), (*Al-Ajini, 2017: 13*)

Key causes include:

- A. **Exceeding Jurisdiction:** The court may address a matter already resolved by arbitration.
- B. **Differences in Legal Interpretation:** The court and arbitrator may interpret the same law differently, producing contradictory results.
- C. **Appeal of the Arbitral Award:** In some cases, a party challenges the arbitral award, and the court issues a different ruling upon review. (*Shams, n.d.*), (*Safae & Ghasemzadeh, n.d.*), (*Shahbazinia, n.d.*)

2. COMPARATIVE STUDY OF THE APPROACHES OF IRAQI, EGYPTIAN, AND FRENCH LAW IN RESOLVING CONFLICTS BETWEEN CIVIL AND ARBITRAL AWARDS

2.1 Position of the Iraqi Legislator

The Iraqi legislator, under Article 203 of the Civil Procedure Code, recognizes conflicts between judgments as one of the grounds for cassation (appeal to the Court of Cassation).

To resolve this issue, several conditions are stipulated:

- A. The issuance of two conflicting judgments in the same case or by two courts of equal rank.
- B. Unity of the dispute: the parties, subject matter, and cause of action must be identical in both judgments.
- C. Conflict in the main content of the judgments, making simultaneous execution impossible.
- D. The first judgment is final, while the second is not.

However, the author notes that the 30-day time limit for filing a cassation appeal may render this solution ineffective; if the deadline passes, the conflict persists. To address this, Iraqi law provides an alternative solution: giving preference to one of the two conflicting judgments. This action is undertaken by the Supreme Court, but because it is discretionary for the parties or enforcement officials,

it may fail to resolve the issue, leaving the conflict unresolved. The author suggests that this process should be mandatory and that a clear criterion should be established for giving preference to one of the two judgments (e.g., chronological priority or issuance by a higher court).

2.2. Position Of the Egyptian Legislator

The Egyptian legislator, under Article 249 of the Civil and Commercial Procedure Code, also allows for cassation (appeal) to resolve conflicts between judgments. The conditions are similar to those in Iraqi law, with emphasis on the finality of the first judgment and the conclusiveness of the second judgment. A key point in the Egyptian approach is that the cassation appeal is filed only against the second (later) judgment, as it is this judgment that affects the validity of the first. If the conflict is confirmed, the cassation court annuls the second judgment, thereby resolving the conflict. If the court finds that the matter is ready for review, it issues the appropriate ruling to eliminate the contradiction.

2.3. Position Of the French Legislator

The French legislator considers conflicts between judgments as a ground for cassation (appeal) and provides two mechanisms to address this issue:

- A. **Cassation Against the Later Judgment:** If, during the trial, a defense based on *res judicata* (the matter already judged) is raised and the court does not accept it, the parties may file a cassation appeal only against the second judgment. If the conflict is established, the cassation court annul the second judgment in favor of the first judgment.
- B. **Simultaneous Cassation Against Both Judgments:** In cases where both judgments are final and not subject to ordinary appeal, French law allows cassation against both judgments simultaneously, even if the statutory deadline has passed. In this scenario, the cassation court may annul one or both judgments to resolve the conflict.

However, the author notes that the French legislator has not provided a specific criterion for giving preference to one judgment over the other when one is annulled. (*Al-Enazi, 2006: 8*), (*Sadeq, n.d., :132*), (*Abd, 2014: 33*), (*Al-Sanouri, 2005: 65*), (*Al-Danasouri & Al-Shwarbi, n.d.:1426*), (*Fahmi, n.d.: 673*), (*Al-Sharaeri, n.d., : 165*).

3. RESOLVING CONFLICTS BETWEEN CIVIL AND ARBITRAL AWARDS AND THEIR IMPACT ON TRANSACTION STABILITY

After the issuance of court judgments or arbitral awards, new decisions may be rendered that conflict with previous rulings on the same matter and involving the same parties. Such conflicts threaten the credibility of the legal system and the stability of transactions.

Two main types of solutions exist to address this issue:

- A. **Preventive Measures:** These operate before a conflicting judgment is issued. The most important is the defense of *res judicata*, which alerts the court that a decision on the same matter already exists, preventing the issuance of a new conflicting judgment.
- B. **Remedial Measures:** If preventive measures fail, remedial tools are needed, primarily through cassation (appeal) or annulment of the later judgment. Different legal systems, such as those of Iraq, Egypt, and France, adopt different approaches.

This discussion examines conflicts and their solutions in two main areas: conflicts between court judgments and conflicts between court judgments and arbitral awards.

- A. **Iraq:** Provides cassation and preference of one judgment over another. However, due to time limits and the discretionary nature of the process, these solutions may be ineffective.
- B. **Egypt:** Focuses on cassation against the later judgment to annul a ruling that conflicts with a prior valid judgment.
- C. **France:** Allows cassation and, in specific cases, permits simultaneous appeals against both conflicting judgments. (*Al-Enazi, 2006: 8*), (*Wali, n.d.,:243*), (*Ibrahim, n.d.,: 132*), (*Egyptian Code of Civil Procedure, 1968, art. 123*), (*French Code of Civil Procedure, art. 63*), (*Federal Court of Cassation [Iraq], 2008*), (*Al-Kilani, 2012: 249*), (*Al-Meligi, 2011: 141*), (*Abd Al-Sadeq, 1986: 19*).

4. CONCLUSION

This article concludes that conflicts between court judgments, particularly conflicts in the content or reasoning of a judgment, represent a serious problem that can make enforcement impossible. Such conflicts differ from material errors, which are only formal or superficial and can be corrected by the same court, whereas a genuine conflict affects the substance of the judgment and undermines its validity.

The main findings and recommendations of this study are as follows: A civil court judgment is the final decision of a competent court resolving a

legal dispute. In contrast, an arbitral award is issued by a private authority (arbitrator). Despite many similarities, they differ in that an arbitral award requires court approval for enforcement, while a court judgment is directly enforceable. Court judgments have two main elements: substantive (the content of the ruling) and formal (the manner of issuance). Arbitral awards do not have a dual (contractual and judicial) nature; their nature is unified. Temporary or interim arbitral awards do not have final binding effect, as their purpose is to provide provisional protection rather than a final resolution. Conflict in the reasoning of a judgment occurs when the reasons provided for the ruling contradict each other or the main content of the judgment, rendering it legally unsound. Conflict in the main content of a judgment is more serious, arising when a judgment contradicts a prior decision on the same matter and between the same parties. This type of conflict directly renders enforcement impossible. Using procedural tools such as joinder of claims or the inclusion of a third

party helps courts obtain a comprehensive view of the case and prevent conflicting judgments, reducing the number of disputes and accelerating proceedings. The Iraqi legislator addresses conflicts using both preventive and remedial measures, such as cassation or giving preference to one of the conflicting judgments. The preference criterion in most legal systems, including Iraq, is based on the chronological order of issuance, meaning that the earlier judgment takes priority and its validity is respected. Domestic arbitral awards only acquire enforceability after approval by a competent court.

5. RECOMMENDATIONS

This study emphasizes the importance of clarifying and amending the laws regarding the fate of a judgment that is set aside during the preference process. It also recommends that the criterion for giving preference be explicitly stated in the legislation to prevent confusion and ensure legal stability.

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