



Recognition and Enforcement of Foreign Civil Judgments in Iran

Introduction:

Enforcement of foreign civil judgments is a subject of concern to the judgment creditors when the assets belonging to the judgment debtors are located outside the jurisdictions where the judgments are issued. The aim of this article is to provide a brief overview of the laws and regulations governing the enforcement of foreign civil judgments in Iran.¹ Foreign judgements do not benefit from a unified system of enforcement at an international level such as the one available to foreign arbitral awards governed by the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. The most recent international efforts to create a similar system of enforcement for foreign judgments have resulted in “the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters” in 2019, with only 3 signatories as of date.²

In the absence of a widespread international treaty, the domestic laws of each country as well as any regional or bilateral treaties govern the enforcement of foreign judgments. In Iran, the enforcement of foreign judgments is governed by the domestic laws and regulations, mainly the provisions of Civil Code (1928) and the Law on the Enforcement of Civil Judgments (1977) along with a series of bilateral treaties with various countries, mostly referred to as “the treaties of judicial assistance”.

This article studies the requirements for the enforcement of foreign court decisions under both sets of regulations. In the first section, the requirements and restrictions imposed by the Civil Code will be discussed, and the second section includes a study of the provisions relevant to the topic under the treaties of judicial assistance. Since the enforcement of foreign criminal judgments is outside the scope of this article, a reference made to foreign judgments includes foreign civil judgments, unless otherwise specified.

1. Civil Code: Applicable to All Foreign Documents

The main legal source governing the enforcement of foreign judgments in Iran is the Civil Code, mainly the provisions in articles 972, 974, 975 and 1295. However, these provisions only set forth the general framework for the enforcement and recognition of foreign court decisions. The details and specific requirements for enforcement are mostly determined under the Law on the Enforcement of Civil Judgments.

The general requirements for the enforcement of foreign judgments as provided by the Civil Code provisions will be discussed below separately.

1.1. Article 972: Order of Execution by the Iranian Court

Pursuant to article 972 of the Iranian Civil Code, “Effect cannot be given in Iran to judgments issued by foreign courts and official documents recognized as being enforceable by law in a foreign country unless an order to do so is issued in accordance with Iranian laws.”

As the article clearly states, foreign judgments are not directly enforceable by the Iranian court. should precede the latter stage. Simply put, it is only after the Iranian court determines that the judgment meets

¹ Authored by: Dr. Anooshiravan Karimi, Managing partner and, Sarvenaz Mirzaei, Legal Assistant

² The Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, (open for signature on 2 July 2019).



the legal requirements and recognizes the judgement that it issues an enforcement order, and the foreign court decision can thus be enforced.

Despite reference to the judgments issued by the foreign, as opposed to domestic courts, the requirement for the issuance of an enforcement order or an order of execution is not unique to foreign judgments. Put otherwise, to have a domestic or foreign judgment enforced within the territory of Iran, it must go through the enforcement procedure whereby the enforcing court issues an enforcement order.

1.2. The Competent Iranian Court to Issue an Order of Execution

In Iran, Civil Courts are a type of general courts, i.e., courts of general jurisdiction having the power to hear all civil disputes. General courts consist of preliminary courts and appellate courts of province. The preliminary courts hear all types of civil pecuniary and nonpecuniary disputes; whereas the appellate courts of province hear appeals made from the decisions of preliminary courts. A decision issued by a preliminary court is not final unless either upheld or reversed by the appellate court, or after the lapse of 20 days from the date the decision is rendered in cases where no appeal is made.³

In most cities, the preliminary courts are divided into various branches. Each branch has an “execution office” which oversees the formalities for the enforcement of the decisions rendered by the respective court branch. A request for enforcement shall be made before the same preliminary court branch where the judgment was rendered.

2. Article 1295: Requirements for Enforcement of Foreign Court Decisions

The chapeau of article 1295 Of the Civil Code provides that “Iranian courts will give to documents drawn up in foreign countries the same credit as the said documents possess in accordance with the laws of the country in which they have been drawn up”, subject to several conditions.

There are four general requirements under article 1295 for the enforcement of foreign judgments. First, the judgment must not have lost validity in the issuing jurisdiction. Second, the substance of the decision should in contravention with the “public order” and “good morals” in Iran. Thirdly, the principle of reciprocity must be observed; and finally, the requirement of certification either by the Iranian diplomatic or consular representatives in the country of origin of the judgment, or representatives of the foreign country in Iran.

Each requirement will be discussed separately in the ensuing sections.

2.1. Validity

The first requirement for enforcement of foreign judgments involves their validity in the jurisdiction where the judgment was issued. Pursuant to article 1295, only a document that “have not lost their validity for any legal reason” can be enforced in Iran. However, whether an enforceable judgement must be final and binding, as well as valid, is not explicitly determined under this article. Article 169 of the Law on the Execution of Civil Judgement elaborates more explicitly on these requirements and will be discussed under the relevant section.

³ Articles 330 and 336 of the Iranian Civil Procedure Code



2.2. Reciprocity

Article 1295 of the Civil Code sets forth the principle of reciprocity as a requirement for recognizing the validity of foreign documents. Prior to enactment of the Law on the Enforcement of Civil Judgments, this article was the only legal basis for the requirement of reciprocity in the enforcement of foreign decisions, and the term “document” was construed generally as to include judgments of the foreign courts, among other things.

The party seeking enforcement bears the burden of proving reciprocity in enforcement of Iranian judgments by the foreign court in whose territory the judgment was issued. Article 169 of the Law on Enforcement of Foreign Judgments provides that reciprocity may be established in one of three ways. First, reciprocity may be *legal*, i.e. the laws of a country may provide for reciprocity in the enforcement of judgments entered in Iran, or in all foreign countries including Iran.

Second, contractual reciprocity in the enforcement of court decisions may be provided in the bilateral treaties or agreements between a foreign state and Iran. France, Austria and Russia are some of the countries that have agreed with Iran on reciprocal recognition and enforcement of judgments issued by the courts of one another.

Thirdly, if neither the laws provide for reciprocal treatment nor there is any agreement between the two countries, the party seeking enforcement may provide proof that the courts of the foreign state actually recognize and enforce the Iranian judgments. Court orders requiring enforcement of the Iranian judgments could be an example of proof of *de facto* reciprocity, irrespective of whether there is contractual or legal reciprocity.

2.3. Public order and good morals

Scholars define public order as regulations enacted to protect the public interests the violation of which will disrupt the necessary order for the process of administrative, political and economic affairs or the maintenance of the family.⁴ These laws are deemed to protect the interests and values of the society as a whole and cannot be circumvented through the enforcement of foreign judgment.

While the discretion as to which judgment contravenes public order and good morals remains with the judge, the provisions protecting the public order are usually embodied in imperative laws, such as the prohibition on payment of interests in accordance with Sharia rules.

Another example is article 966 of the Civil Code, providing that the ownership and other rights to immovable property are governed by the law of the country where the property is located. Accordingly, a foreign court decision on the proprietary rights to a certain immovable property located in Iran is against the public order and the Iranian court would not recognize it.

2.4. Certification

Pursuant to article 1295, all foreign documents including court decisions must comply with the laws of the country where the document was drawn up. To ensure that this requirement is met, article 1295 requires that the consular or diplomatic representatives of Iran in the country where the document was drawn up confirm that it was drawn up in conformity with the local applicable laws. Alternatively, the consular or political representative of the country of the origin of the document could verify its conformity with the applicable laws.

⁴ Katouzian Nasser, Elementary courses of Iranian civil law: juristic acts contracts, unilateral acts (Tehran, Ganje Danesh, 2017) no. 57; Katouzian Nasser, Iranian civil law: general principles of contracts, a comparative study (Tehran, Ganje Danesh, 2018) no. 95



3. The Law on the Execution of Civil Judgments

The Iranian legislator enacted the Law on the Execution of Civil Judgments in 1977 to establish the requirements for the enforcement of civil judgments. In particular, article 169 of this law enumerates certain conditions for the enforcement of foreign court decisions in Iran. Some of these conditions were already elaborated above, such as the requirement for compliance with the public order or the role of reciprocity. Other requirements shall be discussed below.

3.1. Finality Requirement

A judgment capable of recognition and enforcement in Iran must be final and binding where rendered. This requirement reflects the general principle of *res judicata* which prevents a court from relitigating a subject matter that has already been adjudicated by another court.

The finality of a judgment is decided under the law of the country of origin. A decision which is appealed from could still be considered final while the appeal is pending if the applicable laws provide so. Therefore, such decision is enforceable in Iran as a final and binding judgment.

3.2. Execution Order by Competent Foreign Authorities

A judgment that is not enforceable in the country of origin cannot be enforced in Iran either. Article 169.8 provides that an order of execution issued by competent foreign authorities is required for the enforcement of a foreign court judgment in Iran. This requirement assures that no impediment exists on the enforcement of the judgement where rendered.

3.3. Compliance with International Treaties or Specific Laws

Article 169 of the Law on the Execution of Civil Judgments and article 974 of the Civil Code require compliance with the international treaties or specific laws for a foreign judgment to be enforceable in Iran. However, this requirement is not exclusive to the foreign court decisions, rather it derives from the general rule under article 9 of the Civil Code which gives the same binding power to international treaties between Iran and other states as that of domestic laws.⁵

3.4. Absence of a contrary judgment

A foreign court judgment cannot be enforced in Iran if a contrary judgement on the same subject matter has been issued by an Iranian court. This condition reflects the *vested-rights doctrine* or the principle of *respect of acquired rights*. The principle provides that once a right is vested in a person by a certain legislation or judgement, it cannot be altered or reduced by a subsequent contrary court decision or law.

3.5. The Exclusive Jurisdiction of Iranian Courts

A matter that falls within the exclusive jurisdiction of the Iranian courts under the Iranian law cannot be adjudicated by courts of other countries. Therefore, a judgment by a foreign court on a matter within the exclusive Iranian courts' jurisdiction will not be enforceable in Iran.

Article 169.7 provides that an enforceable foreign judgment cannot be one that determines a dispute over an immoveable property located in Iran, or on any rights to such property. Although enumerated separately, this

⁵ "Treaty stipulations which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and other government, shall have the force of law", 1928 Civil Code of the Islamic Republic of Iran, Article 9.



requirement is technically an example of a matter that falls within the exclusive jurisdiction of Iranian courts and therefore, a foreign court judgment adjudicating such matter is unenforceable in Iran.

This requirement could also be inferred from the requirement to comply with the public order since, as discussed earlier, regulation and adjudication of immovable property and any rights to it belongs to the sphere of public order under the Iranian law. Nevertheless, it is reiterated as a separate requirement for enforcement of foreign judgements under article 169, reflecting the importance of the matter in the eyes of the Iranian legislator.

Concluding Remarks

Foreign court judgments can be enforced in Iran if they meet certain conditions. A foreign judgment must not only be final, valid and binding in the country where it was entered, but also it must be actually and presently enforceable there. The Iranian legislator requires an order of execution issued by competent authorities of the home country as proof that the judgement is enforceable where it was issued.

Although the Iranian court does not examine the merits of the judgment, the judgement must not contradict the public order and good morals in Iran. Moreover, it cannot contravene the international treaties between Iran and other countries or any specific Iranian law. Therefore, to the extent that a judgment is claimed to conflict with the public order or such laws and treaties, the Iranian court will have to consider the merit of the decision for the sole purpose of adjudicating such claim.

Possible exclusive Jurisdiction of the Iranian court over the is another matter that needs to be examined by the Iranian court before it issues an execution order. If a matter is within the exclusive jurisdiction of the Iranian court, a judgment adjudicating it by a foreign court cannot be enforced in Iran. However, if a judgment is valid, final and binding in the country of origin and is accompanied by an order of execution or its equivalent issued by competent authorities there, the Iranian court does not examine the jurisdiction of the foreign court separately.

Last but not least, reciprocal enforcement of the Iranian court judgments in the country of the origin of the judgment is another condition for the enforcement of a foreign judgment. Reciprocity could be contractual, legal or de facto. When there is a treaty between Iran and a foreign country on the reciprocal enforcement of the judgments, it prevails over other laws regulating the enforcement of foreign court decisions.

(Karimi & Associates Law Firm)

Anooshiravan Karimi
Sarvenaz Mirzaei