

Parallel Proceedings: An Iraqi Perspective

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In previous articles we have addressed contract drafting questions (“Contract Drafting Insights from Iraq” – Law Update May 2017 issue) and Conflict of Law questions (“Conflict of Laws: an Iraqi Perspective” – Law Update August 2017 issue). This article addresses parallel proceedings with an Iraqi court as one of the active forums. To appreciate why parallel proceedings can easily become a reality in Iraq, it is necessary to restate that courts in Iraq do not look to party autonomy or choice to determine questions of jurisdiction and use a rather broad set of rules to determine jurisdiction. The default jurisdiction rules in Iraq are considered part of public policy, and they allow for suing a foreigner, if:

- he or she is present in Iraq;
- if the lawsuit involves real state property that is in Iraq territory;
- if it involves a contract that was signed or performed in Iraq; or
- If it involves an event, which took place in Iraq.

Those broad rules often result in judicial proceedings commencing in Iraq despite the parties agreeing otherwise. In this article we will consider the domestic rules for parallel proceedings in Iraq, if there is another domestic proceeding on the same subject matter and move to it’s application in the case of a foreign proceeding. We will also cover provisional relief while parallel proceedings are pending inside and outside Iraq and the occurrence where one of the parallel proceedings is an Arbitration proceeding and the other is a domestic Iraqi proceeding. Finally, we will cover the domestic rules on conflicting judgements and their potential applicability to conflicting foreign, or domestic and foreign judgements.

The domestic Iraqi rule on parallel proceedings

The position under the Iraqi Code of Civil Procedures (“CPC”) is a race to the courthouse, Article 76 of the CPC states the following:

1. A single case may not be filed in more than one court. However, if this does happen then the pleading of the suit which was first raised shall be admitted and the other pleadings shall be disregarded;
2. The court may decide to consolidate the two suits, if the other one was filed before the same court.

It is worth noting that all Iraqi courts apply the same substantive law and whilst variations in the region of Kurdistan are negligible, uniformity of applicable law gives little cause for friction between different courts. Under the CPC rule outlined above a second judicial proceeding would be dismissed or consolidated (if filed before the same court) where it is found to concern the same subject matter. In addition, a judicial proceeding may be suspended if “issuance of a judgment is reliant on resolving another matter” (Iraqi CPC Article 83 (1)). Iraqi courts suspend proceedings if

the decision must take account of another decision. For example, a civil dispute affected by the result of a criminal case, or a civil dispute pending an arbitration decision (though Iraqi courts tend prefer to apply a different rule in the CPC – see arbitration section below).

Iraqi courts are generally reluctant to apply the rules of the Code of Civil Procedures and dismiss a domestic judicial proceeding because a judicial proceeding has been initiated in another jurisdiction at a prior date. The reluctance of the Iraqi courts stems in part from the rules of jurisdiction in the Iraqi Civil Code, which are viewed as part of public order and thus override the rules of the Code of Civil Procedures. Nevertheless, the position is not completely settled in Iraq. An argument that the policy behind the aforementioned Article 76 applies equally to domestic and foreign judicial proceedings is possible notwithstanding the mandatory rules of jurisdiction. General principles of justice may also be argued in favor of application of Article 76 to foreign judicial proceedings, as the result of conflicting judgements is irrational. The difficulty is in predicting how an Iraqi court would react in a particular case.

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Provisional relief while parallel proceedings are pending inside and outside Iraq

One further source of complication in parallel proceedings is that a court in a foreign jurisdiction might issue provisional orders while the dispute is being heard in Iraq. Judicial judgements are enforced under the Law for Enforcement of Foreign Court Judgements No. (30) of 1928. This law applies to judicial judgements issued in countries specified by the Iraqi Ministry of Justice. The law for enforcement of foreign court judgements does not expressly specify whether an order for provisional relief is an enforceable judicial judgement or not. The law for enforcement of foreign court judgements requires a judgement presented for recognition and enforcement to be enforceable where it was issued. The law allows the court to stay proceedings for recognition and enforcement if the court finds that the judgement addressee has exercised or intends to exercise further right of appeal. Combined with the other cumbersome requirements for enforcement of a foreign judgement under the law for enforcement of foreign court judgements, recognising and enforcing an order for provisional relief becomes a difficult task.

It should be noted however that it is not always difficult to recognise provisional relief in Iraq. For example, provisional relief ordered in Palestine, Yemen, Libya, Egypt, Sudan, Mauritania, Syria, Somali, Tunisia, Morocco, Jordan, Saudi Arabia, the UAE, Oman, Bahrain, or Algeria, will be subject to the Riyadh Convention on Judicial Cooperation of 1983 (“Riyadh Convention”). The Riyadh Convention allows enforcement of orders of provisional relief and expressly includes them as judicial judgements. However, the Riyadh Convention importantly excludes provisional and precautionary measures and judgements made in cases of bankruptcy, taxes and fees, and orders made against a state. Furthermore, the Riyadh Convention allows refusal of enforcement and recognition in the following circumstances:

- If recognition would be in contradiction with the stipulations of the Islamic Sharia, the provisions of the constitution, public order, or the rules of conduct of the member state requested to uphold the

judgement;

- If the judgement was passed in absentia without notifying the judgement addressee party to the proceedings in an appropriate fashion that would enable him to defend himself;
- If the law of the member state requested to uphold the judgement applicable to legal representation of persons of diminished capacity were not taken into consideration;
- If the dispute relates to another final judgement which attained *res adjudicata*, between the same parties and on the same subject matter, in the member state requested to uphold the judgement, or in a third state if said member state recognises such a judgement;
- If the dispute is also the subject of a judicial proceeding, between the same parties and on the same subject matter, being heard by the courts of the member state requested to uphold the judgement and the action has been brought before the courts of said member state before the presentation of the dispute to the court of another member state, which issued the judgement.

It is worth noting that the application of rule (e) above gives the same result under the Iraqi Code of Civil Procedures by recognising the provisional order issued by the court where proceedings were initiated first.

Parallel judicial and arbitral proceedings

The position on arbitration in Iraq is different from that of parallel judicial proceedings. While this article does not address enforcement of arbitration decisions, we are concerned with the effect of an arbitral proceeding on a judicial proceeding. A valid arbitration clause can be used to suspend, but not dismiss, judicial proceedings in Iraq, if raised in the first hearing with proper notice being sent to the objecting party. If arbitration is not raised in the first hearing, even if in default, it will be waived. Iraqi law does not expressly specify a maximum time period for suspension of a judicial proceeding pending resolution of the dispute in arbitration. The objecting party which requested suspension may request the court to nullify the claim after six months if no arbitration proceeds. In this case, the objecting party would be relying on Article 83 (1) of the Iraqi Code of Civil Procedures. This argument requires a showing of an action or an inaction on the part of the counterparty in the judicial proceeding causing the delay of resumption of the proceedings. Not filing for arbitration without an excuse may be viewed as such an inaction. Further, once arbitration proceedings start, a decision needs to be rendered within the agreed period or six months from the date of the arbitrator's acceptance to act if there is no agreed time table to issue the award. Once an arbitration decision is issued, the Iraqi judicial proceeding resumes and the Iraqi court will consider the arbitration decision when rendering its judgement.

Parallel judicial and arbitral proceedings

In the case of two conflicting judgements in a dispute between the same parties on the same subject matter, a request may be made to the Court of Cassation to review the decisions and choose one to be enforced in a reasoned decision. This rule applies to conflicting domestic judgements, a domestic judgement and a foreign judgement after it is recognised by an Iraqi court. A foreign judgement becomes a domestic judgement after it is recognised by an Iraqi court. An arbitration also becomes a domestic judicial judgement after it is recognised by Iraqi courts.

Conclusion

The rules on jurisdiction in Iraq do not look to party autonomy and can easily result in parallel proceedings inside and outside Iraq. The domestic rule in Iraq is clear that the second proceeding is nullified and the first continued, or both proceedings are consolidated if filed before the same court. This rule is not expressly limited to domestic proceedings, but Iraqi courts are hesitant to apply it to foreign proceedings as well. Provisional relief while multiple proceedings are ongoing is difficult to recognise and enforce, unless a judicial cooperation treaty is applicable, for example the Riyadh Convention. An arbitration agreement does not exclude Iraqi court's jurisdiction but mandates suspending proceedings if raised in the first hearing. Finally, if there are conflicting judicial decisions an application to the court of Cassation may be made to determine which decision is to be enforced.

Al Tamimi & Company's [Litigation team](#) regularly advises on parallel proceedings. For further information please contact [Ali AL Dabbagh \(a.aldabbagh@tamimi.com\)](#) or [Jawad Khalaf \(J.Khalaf@tamimi.com\)](#).