The Court of Cassation Annuls an Arbitral Award over Foreign-Currency Denomination, Finding No Basis in the 1990 Egypt-Saudi Arabia Agreement

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Dispute Resolution | May 8, 2025

Court of Cassation

Appeals No. 32779 and 32790 of Judicial Year 93

Judgment of 8 May 2025

On 8 May 2025, the Court of Cassation did not find in Article 17(3) of the Egypt-Saudi Arabia Agreement on Economic, Commercial, Investment and Technical Cooperation a basis for compensation in foreign currency.

This decision was issued in the context of a dispute arising from a 2007 Memorandum of Understanding between some of the appellants and a Saudi investor for the sale of 49% of the shares of an Egyptian joint stock company for EGP 58 millions. After the appellants sold the shares to a third party in 2012, the Saudi investor pursued arbitration before the Cairo Regional Centre for International Commercial Arbitration (CRCICA), which in October 2022 awarded him compensation of USD 23,045,388 plus 5% annual interest (Case No. 1394 of 2020). The appellants sought annulment of that award before the Cairo Court of Appeal. They alleged that the arbitral award, which denominated the compensation awarded to the Saudi investor in U.S. Dollars, violated Article 212(1) of the Central Bank, Banking Sector and Money Law No. 194 of 2020, as forming part of Egypt's public policy.

The Cairo Court of Appeal initially rejected the appellants' petition to set aside the Arbitral Award on public policy grounds, relying on Article 111(3) of the previous Central Bank, Banking Sector and Money Law No. 88 of 2003.

The appellants lodged two appeals before the Court of Cassation, contending, *inter alia*, that the aforementioned judgment had erred in law in rejecting their plea that the Arbitral Award violated the mandatory public order rules of Article 212(1) of the Central Bank, Banking Sector and Money Law No. 194 of 2020 by denominating the investor's compensation in a currency other than the national one, despite the fact that the dispute concerned a contract denominated in Egyptian pounds for the sale of shares in an Egyptian company, and that the arbitration had been conducted in Egypt.

The Court of Cassation accepted this argument. It first held that provisions of the successive foreign currency laws are mandatory and pertain to public order because they are intended to achieve a public economic interest connected to the higher order of society, which takes precedence over individual interests**. Accordingly, such provisions have a direct effect from the date of their enactment, even on contracts predating their enactment. The Court further stated that the Central Bank and Banking Sector Law designates the Egyptian pound as the official monetary unit in Egypt and requires its use as the default currency. The Court noted that this designation is a manifestation of the State's sovereignty in the economic and monetary spheres, and that the legislator accordingly made banknotes issued by the Central Bank of Egypt unlimited legal tender and established them as the default currency for transactions within Egypt, unless otherwise provided by law or international agreement.**

The Court emphasized that this is confirmed by the legislator in the final paragraph of Article 212 of Law No. 194 of 2020, which provides: **"Transactions within the Arab Republic of Egypt shall be conducted in Egyptian pounds, unless otherwise provided in an international agreement, another law, or in cases specified by a decision of the Board of Directors."** It further noted that **the scope of permissible dealings in foreign currency within Egypt had been narrowed under the new Law No. 194 of 2020 compared with the old Law No. 88 of 2003.**

The Court thus established that**, as a default rule, compensation must be paid in the national currency** and that a judgment ordering payment of compensation in a foreign currency, absent an agreement between the parties on payment of compensation in that foreign currency, constitutes an error in the application of the law.

The Court of Cassation then referred to **Article 17 of the Presidential Decree-Law No. 208 of 1990 (published on 8/11/1990), approving the Egypt-Saudi Arabia Agreement on Economic, Commercial, Investment and Technical Cooperation, ratified by the People's Assembly at its session of 26/5/1992,** which provides investment guarantees for investors of the contracting parties. It indicated that **the treaty regulates an investor's right to compensation for losses incurred as a result of non-commercial risks other than those specified in the first paragraph of the same provision, according to the same basis applied in compensating nationals of the host state under that state's own laws.**

Therefore, the Court decided that, **because the Arbitral Award ordered the appellants to compensate the Saudi investor in a foreign currency, and there was no agreement between the parties to the MOU to provide compensation in a foreign currency – particularly because the MOU affirmed that the price for the purchase of 49% of the shares was to be paid in the local currency and that the parties' relationship was governed by Egyptian law– the** Arbitral

Award had violated Egyptian public policy satisfying one of the grounds for setting aside the Arbitral Award under Article 53 of Egyptian Arbitration Law No. 27 of 1994.

Since the appealed decision rejected the plea of nullity of the arbitral award for ruling the compensation amount in a currency other than the national currency, the Court of Cassation held that it was accordingly flawed by violation of the law and error in its application.

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