Egyptian State Council Rules Italian Law Governs Employment Contracts of Egyptian Workers at Egypt's Cultural Representation Office and Do Not Constitute Sovereign Acts

Muhammed Magdy Loulah
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On 16 April 2025, the General Assembly of the Advisory Opinion and Legislation Departments of the Egyptian State Council gave its opinion on the legality of contracting with Egyptian workers residing in Italy to work at the Egyptian Cultural Representation Office in Rome, and on the determination of the financial treatment applicable to these contracts. In its reasoning, the General Assembly referred, among other sources, to Article 41 of the Vienna Convention on Diplomatic Relations of 1961, concerning the duty to respect the laws of the receiving State, in connection with the law applicable to the employment contracts at issue.

Facts

The Cultural Affairs and Missions Sector of the Ministry of Higher Education had approved contracting a number of local employees to work at the Egyptian Cultural Representation Office in Rome. Acting on this basis, the Cultural Attaché, Director of the Educational Mission Office in Rome, concluded employment contracts with these employees in accordance with the provisions of Italian law, notwithstanding that one of them held Egyptian nationality and had previously been contracted under Egyptian law. These employees subsequently claimed the financial differences between what they received under their contracts and the minimum wage prescribed under Italian legislation, for the contractual period extending from 1 July 2009 to 31 December 2020. This gave rise to the question referred to the General Assembly: the legality of the Ministry of Higher Education's contracting with Egyptian workers residing in Rome to work at the Egyptian Cultural Representation Office in Rome, and the determination of the financial treatment applicable to these contracts.

The General Assembly's Decision

In determining the financial treatment applicable to the contracts in question, the General Assembly referred to Article 10 of the Civil Code, which provides that Egyptian law is the reference for characterising relations where it is necessary to determine the nature of such relations in a case involving a conflict of laws, in order to identify the law applicable among them.

It also referred to Article 19 of the Civil Code, which determines the law applicable to contractual obligations by reference to the common domicile of the contracting parties, or, where their domiciles differ, the law of the State in which the contract was concluded, unless the parties agree, or the circumstances indicate, that another law is intended to apply. It also provides for the application of the law of the location of immovable property to contracts relating thereto.

It further referred to Article 20 of the Civil Code, which determines the law applicable to the form of contracts between living persons by reference to the law of the country in which the contract was concluded, while also permitting the form to be governed by the law applicable to the substantive provisions of the contract, the law of the domicile of the contracting parties, or their common national law.

The General Assembly then referred to Decree No. 33 of 1964 of the Minister of Foreign Affairs, publishing the Vienna Convention on Diplomatic Relations signed at Vienna on 18 April 1961, together with the Optional Protocol concerning Acquisition of Nationality annexed thereto and the relevant reservations. In that respect, it referred to Article 1 of the Convention concerning the definitions of the relevant members and staff of a diplomatic mission. It also referred to Article 41(1) of the Convention concerning the duty of persons enjoying privileges and immunities to respect the laws and regulations of the receiving State and not to interfere in its internal affairs.

The General Assembly further noted the Regulation for the Employment Relationship of Employees of Embassies, Consulates, Legations, Cultural Offices and International Organisations in Italy (2023–2025), which governs the employment relationship between the aforesaid entities and their employees, whether Italian nationals or foreign nationals residing in Italy, and provides for the remuneration and allowances payable to such employees.

Therefore, in light of Article 10 of the Egyptian Civil Code concerning the characterisation of legal relations in cases involving a conflict of laws, and Articles 19 and 20 concerning the law applicable to contractual obligations and the form of contracts, respectively, together with Article 41 of the Vienna Convention on Diplomatic Relations of 1961, which establishes the duty to respect the laws of the receiving State and not to interfere in its internal affairs, the General Assembly found that, as a rule, the contractual relationship is subject to the law of the receiving State, as being the law most

closely connected to the contract and most related to the circumstances of its performance, and as ensuring a balanced legal protection of the rights and obligations of both parties.

The General Assembly further found that such application does not constitute a departure from the principle of the sovereignty of the Egyptian State, nor a prejudice to its public order, so long as the contract, or the foreign law thereby chosen, does not include anything contrary to constitutional values or diminishing the privileges established for the State under the rules of public international law.

In this connection, the General Assembly referred to international law jurisprudence concerning State immunity, under which the scope of the immunity enjoyed by a foreign State is determined by the nature of the act in dispute. It distinguished between sovereign acts, in respect of which the State enjoys immunity, and acts undertaken by the State in the exercise of activities of an administrative or commercial nature (*acta jure gestionis*), which do not fall within the scope of such immunity and are, by their nature, subject to the local law of the State in which they are performed.

Applying this distinction, the General Assembly considered that the contracting of the Egyptian mission abroad with local employees constitutes an executive administrative act undertaken by the State for the management of a public utility, rather than a sovereign act in respect of which the State enjoys immunity. It further considered that the fact that one party to the contract is a foreign governmental body does not alter the nature of the act, since its scope is confined to matters of operation and management and does not extend to the essential diplomatic functions protected under the rules of international law.

Accordingly, provided that the formal and substantive requirements for contracting are fulfilled, the contractual relationship is subject to the legislation in force in the State of Italy pursuant to the provisions of the Civil Code and the Vienna Convention on Diplomatic Relations of 1961.

Referring to the Regulation for the Employment Relationship (2023–2025), the General Assembly stated that the Regulation governs the employment relationship of Italian or foreign employees residing in Italy, including their wages and allowances, and thus constitutes the applicable rules in the present case, including with respect to determining the financial entitlements of the Egyptian employee contracted to work at the Cultural Office in Rome, provided that the conditions and legal requirements prescribed therein are satisfied.

Conclusion

The General Assembly of the Advisory Opinion and Legislation Departments concluded that it is permissible for the Ministry of Higher Education and Scientific Research to contract with Egyptian employees resident in the State of Italy to work at the cultural representation offices in Rome,

through the Ministry of Foreign Affairs as the authority competent to conduct external relations, and that the provisions of the legislation in force in the Italian State apply to the contractual obligations in this case, on the terms set out in the reasoning above.

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