Court of Cassation Upholds a Treaty-Based Exclusion of Depositor Accounts from Domestic Attachment

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Law of treaties | Jun 16, 2021

Court of Cassation, Civil and Commercial Circuit
Appeal No.11290 of Judicial Year 79
16 June 2021

On 16 June 2021, the Court of Cassation held that the Presidential Decree No. 547 of 1974 approving the Agreement Establishing the Arab International Bank for Foreign Trade and Development (hereinafter the Agreement) constitutes special legislation that must be applied — to the exclusion of the general rules of the Civil Code and the Code of Civil and Commercial Procedure — to the question of judicial or administrative attachment on depositor accounts held with the Arab International Bank.

This judgment was delivered in the context of a cassation appeal brought by the Chairman of the Board of Directors of the Arab International Bank, in his capacity, against a judgment of the Cairo Court of Appeal ("North Giza Circuit") which had upheld the validity of a precautionary attachment levied on funds of a debtor company deposited with the Bank in satisfaction of a sum due from it pursuant to an arbitral award without addressing the Bank's argument based on Articles 9 and 13 of the Agreement.

Before the Court of Appeal, the appellant Bank had maintained in its defence that, pursuant to Articles 9 and 13 of the Agreement— signed by the member States, including Egypt, on 22 August 1973, and which became part of the law of the State after its approval by the People's Assembly on 8 June 1974 and by the President of Egypt on 10 June 1974, by virtue of Presidential Decree No. 547 of 1974, published in the Official Gazette of 4 July 1974, Issue No. 27 (supplement)—no judicial or administrative attachment may be levied on the accounts of depositors with the Bank, and that this Agreement constitutes a special law within the legal order of the State which, in this instance, must be applied to the exclusion of the general law. The Court of Appeal upheld the judgment of the Court of First Instance, which held the attachment to be valid, without addressing this defence. Thus, the Bank appealed against this judgment by way of cassation.

The Court of Cassation upheld the bank’s plea, stating that it is settled in the case law of this Court that a judgment's omission to examine a defence raised by a litigant entails the nullity of the

judgment if such defence is fundamental and material to the result reached by the court...

Thus, turning to the Appellant's argument regarding the applicability of the Agreement, the Court stated that

> "The Agreement concluded between the Government of Egypt, the Government of Libya, and Oman concerning the approval of the Agreement Establishing the Arab International Bank for Foreign Trade and Development and the Basic Statute annexed thereto, which was signed in Cairo on 22 August 1973, became, upon the issuance of the Presidential Decree No. 547 of 1974 and after its approval by the People's Assembly, part of the law of the State.

The Court then noted that the principle, as stated in Article 234 of the Civil Code, is that all of the debtor's property guarantees the satisfaction of his debts. **The law has legislated precautionary and execution measures and secured their use by creditors in fulfilment of this purpose, providing for them in the Code of Civil and Commercial Procedure. The provisions of that Code thus govern the levying of attachments thereunder. Accordingly, the provisions regulating such procedures are those originally applicable, unless particular circumstances arise in respect of which the legislator deems it necessary to suspend some of those provisions or to substitute special legislation for them.**

In that regard, the Court stated that the Presidential Decree No. 547 of 1974 is a special legislation in its nature and scope, the legislator having thereby departed from the general rules concerning the taking of judicial or administrative attachment measures on accounts of depositors with the Arab International Bank and having established for them special rules under which it is impermissible to take such measures against these accounts.

It further emphasized that it is settled as a matter of law that, **where a special law exists, the general rules may not be invoked except in respect of matters left unaddressed by the special law. The special law may not be disregarded on the pretext of applying a general rule, as this would be in direct contradiction with the purpose for which the special law was enacted.**

Therefore, the Court held that Article 9 of the Agreement—which provides that "no measures of nationalization, confiscation, or sequestration may be taken against the Bank, or against the shares of juridical or natural persons in the capital of the Bank, or against the sums deposited therewith which are found in a member State, nor may judicial or administrative attachment measures be taken against them"—and Article 13 of the same

Agreement, which provides that “accounts of depositors which may be found in a member State are confidential, may not be inspected, and no judicial or administrative attachment measures may be taken against them,” indicate that judicial or administrative attachment measures may not be taken against accounts of depositors with the appellant Bank, and that these two provisions must be applied in this regard, to the exclusion of the rules of the general law, on the basis that Presidential Decree No. 547 of 1974 is deemed special legislation which may not be disregarded on the pretext of applying a general rule.

In light of the foregoing, the Court held that, since the appellant Bank maintained in its defence before the Court of Appeal that attachment may not be levied on the funds of depositors with it, in application of the provisions of Articles 9 and 13 of the Agreement, and the impugned judgment omitted to rule on this defence, notwithstanding that it is a fundamental defence capable of altering the view taken in the case, the judgment is thereby tainted by a defect in the statement of reasons and by a breach of the right of defence, necessitating that it be quashed

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