

The International Jurisdiction of the Iraqi Courts

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When it comes to setting the rules and principles of jurisdiction, each country holds the absolute discretion in determining the cases over which its courts shall have jurisdiction when it comes to both national conflicts and conflicts concerning international parties. Additionally, we usually find that the national legislator makes use of a few rules concerning domestic jurisdiction as basis for convening international jurisdiction in cases of similar nature. This includes, as an example, the jurisdiction of the plaintiff's habit or residency. However, it is important to note that the organization and structuring of International Jurisdiction is also subject to other rules concerning the sovereignty of the state, the need for international dealings and the power of enforcement. Additionally, it is important to note that in most cases, international legislation contain common general principles when it comes to the rules regarding jurisdiction. These include the plaintiff's nationality, domicile, financial location, source or execution of obligation place, voluntary submission, the correlation and preliminary issues (the "General Principles").

Going back to the Iraqi Law, we find that the laws explicitly tackle the issue of International Jurisdiction in certain legislation. This is as conflicts of international character are subject to the provision of the private laws when it comes to civil, commercial and personal status issues. Moreover, these issues are mainly tackled in the provisions of the Civil Code No.40 of 1951 (the "Code") as well as the Personal Status Law for Foreigners No 78 of 1931 (the "Law").

This is so as Article 14 of the Code provides that "The Iraqi is prosecuted before the Courts of Iraq for any obligations bestowed upon him, even if it was concluded outside Iraq". Furthermore, Article 15 states "the foreigner is prosecuted before Iraqi Courts in the following conditions:

1. If he was found in Iraq.
2. If the prosecution was revolving around a right concerning a real estate in Iraq or a moveable object in Iraq at the time of the bringing of claim.
3. If the litigation was about a contract concluded or enforceable in Iraq or if the litigation was about an incident that occurred in Iraq.

Additionally, Article 2 of the Law provides that:

1. The Civil Courts look into the personal status claims for Foreigners.
2. Sharia'a Courts are competent to look into personal status issues for Muslim Foreigners only when the applicable law in accordance with item 1 above is a civil law rather are the jurisprudence and sharia'a provisions.

Therefore, and according to the aforementioned provisions we can sum up the rules of the international jurisdiction of Iraqi Courts to be:

1. The jurisdiction based on Iraqi citizenship of the plaintiff.
2. The jurisdiction based on the existence of money in Iraq.
3. The jurisdiction based on the occurrence and the execution of obligation in Iraq.
4. The jurisdiction based on voluntary submission, notwithstanding the fact that this principle was not explicitly set by the Iraqi Legislator, but it can be drawn from the concept of breach for article No. 7 of the Law of Execution of Foreign Awards No 30 for 1928 ("Foreign Awards Law") that states the jurisdiction of the Foreign Court. As subsection (E) provides that "the sentenced was present at the

proceedings upon his own choice” and subsection (Y) provides that “the sentenced has agreed on the jurisdiction of the Foreign court in his lawsuit”

5. The jurisdiction of the preliminary issues and the reciprocal case and the related case. As the jurisdiction for Iraqi Courts in previously noted issues is in accordance to general rules, outlined in the Law of Civil Procedures.
6. The jurisdiction of issues regarding precautionary and temporary measures.
7. Noting that the Iraqi legislator did not provide rules on the jurisdiction of precautionary and temporary international jurisdiction of Iraqi Courts, unlike other countries’ laws such as the Egyptian Civil Procedures Law in article 3.

However, Iraqi Courts hold this jurisdiction even if it was not competent to rule in the original case, since the precautionary or temporary measure might be in preparation for a case to be held in Iraq. This jurisdiction is deemed an application of the general principles listed in the Law of Civil Procedures. As their procedures correlate with civil security. This includes the principle of precautionary seizure stipulated in Articles (231-250) from the Law of Civil Procedures.

Exceptions to the General Principles are as follows:

1. The jurisdiction for lawsuits regarding real estate outside Iraq.

There is an absolute jurisdiction for Iraqi courts in this matter. As one can understand from the wording of Article 15 of the Civil code, which grants jurisdiction to Iraqi courts in matters regarding real estate in Iraq, that Iraqi courts correspondingly do not have any jurisdiction in matters regarding a real estate outside Iraq. As in this matter, the jurisdiction is given solely to the court of the country where the real estate stands. This was explicitly listed in subsection (a) of Article 7 of the Foreign Execution Law, which declared that the foreign court in the area where the immovable property is has the jurisdiction to rule.

2. The jurisdiction for lawsuits pursuant to bankruptcy.

This jurisdiction was stipulated explicitly in section five of the Commerce Code No 9 of 1970, which elaborates on bankruptcy and still is applicable despite the fact that the above mentioned law has been cancelled. As Articles (573 -574) from Section 5 deals with international jurisdiction for Iraqi courts in cases of bankruptcy and any other related cases. The bankruptcy lawsuits are filed in the domicile or place of business for the merchant. Equally, the main store or the place of residence for the merchant are considered his domicile if he passes away or retires from the profession.

Additionally, and if the merchant carries out a part of his business in a store in Iraq, or in a branch in Iraq or if the merchant was a juristic person that owns a branch or an agency in Iraq, the bankruptcy will be solely on the said branch or agency in the Iraqi territories, unless there existed an international agreement that states otherwise.

3. The Jurisdiction of Company’s Lawsuits.

Article 9 of the Law defined the International Jurisdiction of the Iraqi Courts in claims regarding the management of any deceased foreigners’ inheritance.

4. The Jurisdiction granted by virtue of an enforced treaty in Iraq.

If an enforced treaty exists and Iraq is a signatory, then the articles of this treaty shall place constraints on the general principles of jurisdiction as the provisions of the agreement shall be deemed binding and should be followed, as it is considered a special provision, and special provisions prevail over general provisions. For example, Article 28 of The Warsaw Agreement on the Unification of some provisions on the Responsibility of air carriers for 1929, where Iraq is a signatory party. And the Riyadh Arab Agreement for Judicial Cooperation for 1983 in Articles 26 and 27 state that the jurisdiction shall be in the state’s courts where the defendant resides.

To conclude, the Iraqi legislator has determined the international jurisdiction of Iraqi courts in certain provisions of the Iraqi laws. These articles include Articles 14 and 15 of the Code in addition to Article 2 of the Law. Furthermore, it is important to note that there exists an international jurisdiction the Judge can derive from the concept of breach; like the jurisdiction based on voluntary submission as it was explained above. Or the jurisdiction based on general principles included in the Law of Civil Procedures like the jurisdiction of issues regarding precautionary and temporary measures. And as explained above, there are exceptions to the general principles, for example: the jurisdiction for lawsuits pursuant to bankruptcy or the jurisdiction stipulated in international treaties.