The Role of Public Policy in the Recognition and Enforcement of Foreign Civil Judgments in Iranian and Iraqi Law: A Comparative Study in Light of International Instruments

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Abstract

The recognition and enforcement of foreign civil judgments constitute one of the principal mechanisms of judicial cooperation among states in the field of private international law. With the expansion of commercial, family, and contractual relations, the enforcement of many judgments rendered in one country becomes necessary in another jurisdiction in order to enable the judgment creditor to realize the rights established by the judgment. Nevertheless, foreign judgments are not accepted unconditionally and are generally subject to requirements such as the jurisdiction of the rendering court, the final and binding nature of the judgment, observance of the rights of defense and due process, absence of conflict with a domestic judgment, reciprocity, and compatibility with the public policy of the state in which enforcement is sought. Among these requirements, public policy occupies a particularly significant position, because it serves both to safeguard the fundamental legal and moral principles of the enforcing state and, if interpreted broadly, to constitute a serious obstacle to the international effectiveness of judgments and the legal certainty of individuals. Employing a descriptive-analytical method and a comparative approach, this article examines the role of public policy in the recognition and enforcement of foreign civil judgments under Iranian and Iraqi law and analyzes it in light of international instruments, particularly the 1958 New York Convention, the 1983 Riyadh Arab Agreement for Judicial Cooperation, and other relevant regional instruments. The principal research question is what role public policy plays in Iranian and Iraqi law in the acceptance or refusal of foreign civil judgments and how an appropriate balance may be achieved between safeguarding fundamental domestic principles and respecting the legal effect of foreign judgments. The article hypothesizes that although both legal systems recognize public policy as a ground for refusal, conceptual ambiguity and the absence of clear criteria have created the possibility of broad and discretionary interpretations. The findings indicate that a restrictive and exceptional interpretation of public policy, based on a manifest conflict with fundamental principles of due process and justice, can provide an appropriate means of strengthening international judicial cooperation.

Keywords: public policy, recognition of foreign judgments, enforcement of foreign civil judgments, Iranian law, Iraqi law

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1. Introduction

Recognition and enforcement of foreign civil judgments constitute a central issue within the domain of private international law, situated at the point of equilibrium among the national sovereignty of states, the protection of individuals' acquired rights, and the necessity of expanding international judicial cooperation (Almasi, 2013). A judicial judgment is an expression of the authority and sovereignty of the state that renders it, and its enforceable effects are, in principle, confined to the territorial boundaries of that state (Nasiri, 1993). Nevertheless, in the contemporary era, with the rapid expansion of cross-border financial, commercial, and family relations, the activities and assets of individuals are no longer confined within the borders of a single country. Under such circumstances, if a final judgment is rendered by a court in one country but cannot be recognized and enforced in the country where the judgment debtor's assets or domicile are located, the completed proceedings lose their practical effectiveness and the interested party will be compelled to institute the action anew. Such a situation, in addition to imposing duplicative costs and prolonging litigation, is inconsistent with legal certainty and the stability of international relations (Shams, 2009). The national laws of various countries, including Iran and Iraq, have accepted the enforcement of foreign civil judgments subject to certain conditions. Such acceptance depends on the satisfaction of requirements including the jurisdiction of the rendering court, the finality of the judgment, reciprocity, and the absence of conflict with domestic judgments (Al-Nadawi, 1983; Bahrami, 2016). Among these conditions, the "public policy" exception occupies a particularly sensitive position because of its flexible and value-laden nature and its connection with the fundamental principles of each country. On the one hand, public policy constitutes a legitimate defensive mechanism for safeguarding the moral, religious, social, and fundamental principles of the enforcing society; on the other hand, its discretionary application or expansive interpretation may become an obstacle to the international circulation of judgments and judicial cooperation (Sadeghi, 2005).

In this context, public policy refers to the fundamental moral, legal, and religious principles of society from which deviation is unacceptable to the judicial system of the enforcing country (Katouzian, 2010). A conflict with public policy arises when the enforcement of a foreign judgment—not merely the foreign law applied or the substantive nature of the dispute—would produce consequences manifestly inconsistent with the legal foundations of the enforcing state. This concept has evolved in light of international instruments, including regional and global conventions, and there is a growing tendency toward its restrictive and exceptional interpretation so as to prevent a review of the merits of foreign judgments under the guise of public policy (Bermann, 2014). The importance of comparing this issue in Iran and Iraq stems from the fact that the two countries share extensive borders, deep commercial relations, and close cultural and religious ties. The provisions governing the enforcement of civil judgments under Iran's 1977 Civil Enforcement of Judgments Act (Article 169) and the Iraqi legislation governing foreign judgments, including Article 6 of Law No. 30 of 1928 and Enforcement Law No. 40 of 1980, expressly regard non-contravention of public policy as a condition for recognition. However, in both countries, conceptual ambiguity and the absence of objective criteria for distinguishing domestic public policy from international public policy have facilitated discretionary interpretations.

This article seeks to answer the principal question of what role and scope the public policy exception has in the recognition and enforcement of foreign civil judgments in the legal systems of Iran and Iraq, and to what extent the judicial interpretations of the two countries are consistent with the approach adopted in international instruments. The research hypothesis is that, despite recognition of this exception in both systems, the absence of a precise distinction between the domains of domestic and international public policy creates the potential for expansive interpretation. This tendency may be moderated and brought into greater conformity with international instruments through the adoption of criteria such as "manifest conflict with the fundamental principles of fair trial" and "restricting reliance on domestic mandatory rules." The structure of the present study is as follows: Section 2 reviews the literature, and Section 3 explains the methodology. Section 4 presents the findings derived from Iranian law, Iraqi law, and international instruments. Section 5 provides a comparative evaluation and analyzes the relevant challenges, while Sections 6 and 7 are devoted to the conclusion and recommendations.

2. Literature Review

Research on public policy in the recognition and enforcement of foreign judgments has developed at the intersection of three areas: general works on private international law, specialized studies on the recognition and enforcement of foreign court judgments, and research on public policy in the enforcement of arbitral decisions. Each of these areas clarifies part of the theoretical and practical foundations of the issue. Nevertheless, the distinction between judicial judgments and arbitral awards requires that findings from the arbitration field be used only to the extent that they concern shared principles, including the exceptional nature of refusal, the prohibition of review on the merits, and the protection of fair trial guarantees.

2.1. General Works on Private International Law

The literature concerning public policy in the recognition and enforcement of foreign civil judgments may be classified into several categories. Some works address private international law generally and examine the position of recognition and enforcement of foreign judgments within it. In this category, authors such as Almasi, Erfanian, Nasiri, Madani, and Seljoghi have examined the theoretical foundations of conflict of laws, acquired rights, the effects of foreign judgments, and restrictions arising from public policy (Almasi, 2013; Erfanian, 2004; Madani, 1996; Nasiri, 1993; Seljoghi, 2006). The importance of these works lies in their provision of the theoretical framework necessary for understanding the relationship between national sovereignty and the acceptance of the legal effects of foreign decisions. Nevertheless, in most of these sources, public policy is addressed as one of the general topics of private international law and is less frequently analyzed specifically in connection with a comparison between Iran and Iraq regarding the enforcement of foreign civil judgments.

The second category comprises works specifically addressing the recognition and enforcement of foreign court judgments under Iranian law. Studies such as those by Pournouri, Pirzadeh, Kashani Arani, and Mardani examine the conditions governing enforcement of foreign judgments in Iranian law, the status of res judicata, the jurisdiction of foreign courts, and obstacles to enforcement (Kashani Arani, 2011; Mardani, 2008; Pirzadeh, 2008; Pournouri, 2009). These works are important because they are more closely connected with the provisions of the Civil Enforcement of Judgments Act and Iranian legal practice, demonstrating that although the enforcement of foreign judgments is possible under Iranian law, it remains subject to certain controls exercised by Iranian courts. Nevertheless, the principal focus of most of these studies is the general set of enforcement conditions, while public policy as an independent and comparative analytical concept has received less detailed attention.

The third category is devoted to the concept of public policy in domestic law and private international law. Works such as Arasta's study on obstacles to the application of foreign law, Sadeghi's article on the concept and application of public policy before judicial and quasi-judicial authorities, Novin's study on public policy in law, and the research by Shahbazi-Nia, Isaei Tafreshi, and Elmi on the concept of public policy in private international law have further clarified the theoretical foundations of this concept (Arasta, 2001; Novin, 2009; Sadeghi, 2005; Shahbazi-Nia et al., 2013). The importance of this category of sources lies in their emphasis on the fluid, value-based, and interpretation-dependent nature of public policy and in their contribution to distinguishing domestic public policy from international public policy. Nevertheless, these works likewise do not primarily focus on a comparative analysis of Iran and Iraq in relation to the enforcement of foreign civil judgments.

The fourth category consists of sources concerning procedural principles, the right of defense, and fair trial guarantees. Because compliance with the minimum requirements of a fair trial constitutes one of the most important manifestations of public policy at the stage of recognizing and enforcing foreign judgments, this category is particularly relevant to the present study. Works such as the study by Azarbayejani and Samavati-Pour on the position of procedural principles and formalities, Khedri's studies on procedural principles and fair trial, and Yaavari's research on the right to a fair trial demonstrate that the right of defense, proper service of process, impartiality of the adjudicatory authority, and the effective participation of the parties in the proceedings constitute fundamental elements of the judicial order (Azarbayejani & Samavati-Pour, 2014; Khedri, 2014, 2015; Yaavari, 2004). These sources are significant to the analysis of foreign judgment enforcement because a manifest violation of such principles may justify refusal to recognize or enforce a foreign judgment.

The fifth category consists of Arabic-language sources concerning Iraqi law and the enforcement of foreign decisions. Among these, Al-Nadawi's work on enforcement law, Abdulraza's study on enforcement of foreign arbitral awards, and certain studies concerning international commercial arbitration in Iraq provide an account of the Iraqi legal approach toward the

enforcement of foreign decisions (Abdulraza, 1989; Al-Nadawi, 1983; Kazem Jabr, 2008; Muhammad, 2012; Sami Muhammad, 1989). These sources demonstrate that under Iraqi law, the enforcement of foreign decisions, particularly in arbitration and commercial relations, is likewise accompanied by considerations such as public policy, jurisdiction, and compliance with essential procedural requirements. Nevertheless, the scarcity of specialized sources comparatively addressing public policy in the enforcement of foreign civil judgments in Iran and Iraq reinforces the need for an independent study in this field.

The sixth category comprises English-language sources concerning international instruments and the recognition and enforcement of foreign decisions, particularly foreign arbitral awards. Studies by Bermann, Lu, Robertson, Sanders, Contini, and Quigley examine the role of public policy within the framework of grounds for refusal of recognition and enforcement of foreign decisions (Bermann, 2014; Contini, 1956; Lu, 2007; Quigley, 1980; Robertson, 2011; Sanders, 1979). Although a substantial portion of these sources concerns foreign arbitral awards and the New York Convention, their importance lies in demonstrating that international instruments, while recognizing public policy as a ground for refusal, place it alongside other grounds of refusal and prevent it from becoming a mechanism for complete substantive reconsideration of the foreign decision. From this perspective, their analysis is useful for understanding the normative logic governing the international recognition and enforcement of foreign decisions.

Overall, the existing literature has clarified different aspects of the subject: some works examine the foundations of private international law and acquired rights; some analyze the conditions governing enforcement of foreign judgments in Iranian law; some explain the concept of public policy at the theoretical level; some elaborate the principles of fair trial; and others address international instruments relating to recognition and enforcement of foreign decisions. Nevertheless, a focused analysis of the role of public policy in the recognition and enforcement of foreign civil judgments in Iranian and Iraqi law, simultaneously taking into account the domestic laws of both countries and international instruments, still requires independent examination. The present article is situated precisely within this gap and seeks, by concentrating on public policy, to move beyond a general discussion of all enforcement requirements and instead provide a specialized and comparative analysis of one of the most important obstacles to the enforcement of foreign judgments.

3. Research Methodology

In terms of purpose, the present study is fundamental-applied research, and with respect to data collection and analysis, it is a qualitative study employing a descriptive-analytical method and a comparative approach. The fundamental dimension of the research concerns clarification of the concept, foundations, and scope of public policy in the recognition and enforcement of foreign civil judgments, while its applied dimension concerns the formulation of criteria for more precise identification of cases in which a foreign judgment conflicts with public policy in the legal systems of Iran and Iraq. The comparative approach is employed to identify similarities, differences, deficiencies, and legal capacities in the two countries and to evaluate them in light of relevant international instruments.

3.1. Data Collection Method

The research data were collected through library and documentary research. The sources used are classified into three principal levels: first, binding domestic legal sources in Iran and Iraq, including laws and regulations concerning the recognition and enforcement of foreign civil judgments; second, international and regional instruments relating to the recognition and enforcement of foreign judicial judgments or arbitral decisions; and third, Persian-, Arabic-, and English-language scholarly sources, including books, articles, and specialized studies concerning public policy, private international law, enforcement of foreign judgments, and fair trial. With respect to Iranian law, the principal focus is on the provisions of the Civil Enforcement of Judgments Act of 1977, particularly Article 169 and other provisions concerning the conditions for enforcement of foreign judgments. The provisions of the 2000 Code of Civil Procedure of the Public and Revolutionary Courts and general rules relating to public policy, good morals, judicial jurisdiction, res judicata, and the right of defense are also examined insofar as they are relevant to the subject. In this part, scholarly opinions and the views of Iranian jurists are used to clarify the concept of public policy and determine its scope.

With respect to Iraqi law, the Iraqi Civil Procedure Law No. 83 of 1969, Enforcement Law No. 40 of 1980, and regulations concerning the validity and enforcement of foreign decisions are examined. Arabic-language sources dealing with the enforcement of foreign judgments and decisions, jurisdictional rules, and the status of public policy and good morals in Iraqi law are also analyzed. The purpose of this examination is to determine the position of public policy within the Iraqi legal framework and compare it with the rules and principles accepted under Iranian law.

At the international level, global and regional instruments concerning the recognition and enforcement of foreign decisions are examined. These include the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the 1952 Convention on the Enforcement of Judgments among the States of the Arab League, and the 1983 Riyadh Arab Agreement for Judicial Cooperation. Although the New York Convention directly concerns foreign arbitral awards rather than judgments rendered by state courts, it is relevant with respect to the formulation of the public policy exception, the limits of review by the enforcing authority, and the prohibition of substantive reconsideration of foreign decisions. Accordingly, the Convention is used solely as an analytical model concerning public policy, and its scope is not treated as identical to that governing the recognition and enforcement of foreign civil judgments.

3.2. Data Analysis Method

Data analysis in this study is conducted in three stages. In the first stage, the content of Iranian and Iraqi regulations concerning recognition and enforcement of foreign judgments is extracted and described. At this stage, the statutory requirements governing acceptance and enforcement of foreign judgments, particularly the requirement of non-contravention of public policy, good morals, and public morals, are identified. The purpose of this stage is to provide a clear account of the existing legal position in each country.

In the second stage, the identified provisions are interpreted analytically. At this stage, the concept of public policy, its relationship with mandatory rules, the distinction between domestic and international public policy, its connection with fair trial principles, and the limits of the authority of the enforcing court are examined. The analysis is not based exclusively on the wording of statutory provisions; rather, the theoretical foundations, objectives of the rules, and practical consequences of different interpretations are also considered. In particular, the study examines whether mere inconsistency between a foreign judgment and a domestic mandatory rule is sufficient to justify refusal of enforcement, or whether the judgment must manifestly and substantially conflict with one of the fundamental principles of the legal system of the enforcing country.

In the third stage, the findings concerning Iranian and Iraqi law are compared with one another and subsequently evaluated in light of the orientation of international instruments. The comparison in this study is not limited to identifying superficial similarities and differences among legal provisions; rather, the foundations, purposes, and consequences of each approach are also examined. At this stage, the extent to which each legal system tends toward an expansive or restrictive interpretation of public policy, the scope of review by the enforcing court, and the possibility of developing common criteria to prevent discretionary application of the exception are analyzed.

3.3. Axes of Comparative Analysis

To systematize the comparative analysis, Iranian and Iraqi legal provisions and doctrinal views are examined according to the following axes:

1. **Legal basis for invoking public policy:** Examination of provisions that regard a foreign judgment's inconsistency with public policy, good morals, or public morals as an obstacle to recognition and enforcement.
2. **Concept and scope of public policy:** Analysis of the meaning of public policy in both systems and examination of the possibility of distinguishing domestic public policy from international public policy.
3. **Timing and subject of conflict assessment:** Examination of whether conflict with public policy must be identified in the operative content of the judgment, the foreign judicial process, or the consequences arising from its enforcement in the enforcing country.
4. **Substantive and procedural public policy:** Distinction between conflict of the content of a judgment with the fundamental legal and moral principles of the enforcing country and conflict of the process by which the judgment

was rendered with fundamental procedural guarantees, such as the right of defense, proper service of process, and the independence and impartiality of the adjudicatory authority.

5. **Limits of review by the enforcing court:** Determination of the boundary between legitimate review of a foreign judgment for compatibility with public policy and impermissible reconsideration of the merits of the dispute or the correctness of the foreign court's reasoning.
6. **Degree of conflict necessary for refusal of enforcement:** Examination of whether any inconsistency with domestic law may prevent enforcement or whether only a manifest, serious, and intolerable conflict with fundamental principles should have such an effect.
7. **Role of international and regional instruments:** Evaluation of the manner in which the public policy exception is formulated in the instruments under examination and the possibility of employing their general orientation in interpreting the domestic laws of Iran and Iraq.

The selection of these axes makes it possible to examine public policy not merely as a broad and abstract concept but on the basis of its actual function at the stage of recognition and enforcement of foreign judgments.

3.4. Criteria for Assessing Public Policy

Five analytical criteria are employed to assess whether public policy may be invoked against a foreign civil judgment. The first criterion is the fundamental nature of the violated principle; that is, the conflicting rule must constitute a basic principle of the legal system of the enforcing country rather than merely an ordinary or supplementary rule. The second criterion is the manifest and serious character of the conflict, such that enforcement of the foreign judgment would produce a result unacceptable to the legal system of the enforcing country. The third criterion is the genuine connection of the judgment with the enforcing country. The closer the effects of the foreign judgment are connected with the legal, social, or economic structure of the enforcing state, the more significant the public policy assessment becomes. The fourth criterion is a focus on the effects of enforcement; therefore, mere differences between the applicable law or the reasoning of the foreign court and domestic law should not result in refusal of enforcement. Instead, the practical consequences of recognition or enforcement should be examined. The fifth criterion is proportionality, meaning that complete refusal of recognition or enforcement should constitute a measure of last resort and that, where possible, partial enforcement or severance of the incompatible portion of the judgment from the remainder should be considered. These criteria have been selected to prevent public policy from becoming an instrument for substantive reconsideration of the foreign judgment. Accordingly, the enforcing court should not re-examine the correctness of judicial reasoning, the assessment of evidence, or the foreign court's interpretation of law unless the outcome of the judgment or the process by which it was rendered manifestly violates one of the fundamental principles of the enforcing country.

3.5. Scope of the Research

The substantive scope of this research is limited to the role of public policy in the recognition and enforcement of foreign civil judgments. Accordingly, other conditions governing enforcement of foreign judgments, such as reciprocity, jurisdiction of the rendering court, finality of the judgment, and conflict with a domestic judgment, are examined only where they are directly related to public policy. Criminal judgments, administrative decisions, and matters concerning the direct enforcement of foreign authentic instruments fall outside the principal scope of the article. Foreign arbitral awards are likewise not the primary subject of the study; nevertheless, rules and studies concerning them are used insofar as they are useful for analyzing the concept of public policy, identifying the limits of review by the enforcing authority, and understanding the approach of international instruments. Such use does not imply that foreign judicial judgments and foreign arbitral awards are regarded as identical in nature; rather, it draws only on the analytical value of the more extensive literature available in the field of arbitration. Geographically, the study is confined to the legal systems of Iran and Iraq. International and regional instruments are also examined with regard to their substantive relevance, the membership or accession status of the two countries, and their capacity to clarify accepted approaches to public policy. Temporally, the analysis is based on legislation in force and relevant legal sources available up to the time of the research.

3.6. Research Limitations

The principal limitation of the study is the general nature of the concept of public policy and the absence of a comprehensive definition and detailed statutory criteria in the legal systems under examination. This characteristic means that determining the scope of public policy depends to a considerable extent on legal interpretation and judicial practice. Another limitation is restricted access to systematically published judicial decisions concerning enforcement of foreign civil judgments, particularly judgments in which public policy has directly constituted the basis for granting or refusing an enforcement application. In addition, relevant international instruments are not identical in terms of subject matter, scope of application, or participating states. Some instruments concern foreign court judgments, some concern arbitral awards, and others relate to judicial cooperation among countries within a particular region. Accordingly, the present study avoids directly extending the provisions of one instrument to a field outside its scope and analyzes each instrument with due regard to its subject matter, nature, and limits of applicability. Despite these limitations, the simultaneous examination of domestic legislation, scholarly sources, and international instruments makes it possible to provide a coherent framework for analyzing public policy in the recognition and enforcement of foreign civil judgments. The findings derived from this method form the basis of the following section, which examines the position and scope of public policy in Iranian law, Iraqi law, and international instruments.

4. Research Findings

The findings of this study indicate that "public policy" is recognized in both the Iranian and Iraqi legal systems as a control mechanism against the enforcement of foreign civil judgments and, at the same time, because of its conceptual ambiguity, possesses the potential to become a broad and sometimes unpredictable barrier. At the same time, examination of relevant international instruments reveals that the predominant transnational tendency is toward a restrictive and exceptional interpretation of public policy and avoidance of substantive reconsideration of foreign decisions (Bermann, 2014; Lu, 2007; Robertson, 2011). Accordingly, the findings are presented under four principal headings: the position of public policy in Iranian law, its position in Iraqi law, the approach of international instruments, and the relationship among these three dimensions.

4.1. Public Policy in Iranian Law

Examination of Iranian legislation and legal literature demonstrates that the Iranian legislature has accepted the principle that foreign judgments may be enforced, but has subjected such enforcement to conditions including non-contravention of public policy and good morals (Bahrami, 2016). Accordingly, public policy in Iranian law is not merely a theoretical concept but constitutes a practical condition for the recognition and enforcement of foreign judgments. Nevertheless, the legislature has not provided a clear definition of the concept and has left identification of its specific applications to the courts and legal doctrine. Consequently, public policy has remained in practice a flexible concept that depends to some extent on judicial interpretation (Erfanian, 2004; Katouzian, 2010; Madani, 1996). Analysis of Iranian legal sources suggests that public policy in this field is more closely connected with the "fundamental principles" of the legal system, good morals, fundamental mandatory rules, and public interests than with every binding rule of domestic law (Novin, 2009; Sadeghi, 2005). In other words, not every inconsistency between a foreign judgment and domestic law automatically justifies refusal of enforcement. What matters is a manifest and serious conflict between the foreign judgment and the fundamental foundations of the Iranian legal system (Shahbazi-Nia et al., 2013). This conclusion is consistent with the dominant approach in private international law doctrine, according to which public policy is a narrowly construed exception that should not be expanded (Arasta, 2001).

Another finding is that public policy under Iranian law possesses both substantive and procedural dimensions. The substantive dimension concerns the content of the foreign judgment: if the outcome of the judgment is manifestly incompatible with the moral, religious, or legal principles of the enforcing country, an Iranian court may refuse its enforcement. The procedural dimension concerns the process through which the judgment was rendered. For example, if foreign proceedings violated fundamental principles relating to the right of defense, proper service of process, or impartiality of the adjudicatory authority, the issue may be framed as one of incompatibility with public policy (Azarbayejani & Samavati-Pour, 2014;

Khedri, 2014; Yaavari, 2004). At the same time, the present research indicates that existing Iranian legal doctrine is increasingly inclined toward distinguishing domestic public policy from international public policy, although this distinction has not yet been fully and expressly institutionalized in statutory texts. International public policy, in this sense, encompasses only those principles whose violation would be intolerable and unacceptable to the Iranian legal order. The findings therefore indicate that Iranian law possesses the capacity for a restrictive interpretation of public policy, although the absence of precise statutory criteria continues to leave room for expansive interpretation (Erfanian, 2004; Shahbazi-Nia et al., 2013).

4.2. Public Policy in Iraqi Law

In Iraqi law, the recognition and enforcement of foreign decisions are likewise subject to restrictions, among which public policy is one of the most significant. Examination of Iraqi civil procedure and enforcement legislation demonstrates that the Iraqi legal system accepts, within a controlled framework, the principle that foreign decisions may produce legal effects, while preserving the possibility of refusing enforcement where the decision is contrary to public policy or good morals (Al-Nadawi, 1983; Muhammad, 2012). This demonstrates that public policy also functions in Iraqi law as a final filter against enforcement of a foreign decision. The Arabic-language sources examined indicate that Iraqi legal doctrine generally associates public policy with fundamental principles of the state, principles derived from Islamic law, public morals, and the foundational legal order (Abdulraza, 1989; Al-Nadawi, 1983). Nevertheless, as in Iranian law, Iraqi legislation does not provide a precise statutory definition of public policy, and its boundaries are instead largely determined through judicial interpretation and legal doctrine. Consequently, in practice the concept may operate both as an instrument for protecting fundamental values and as a basis for excessive caution or strictness in accepting foreign decisions.

Another important finding is that Iraqi law, like many contemporary legal systems, seeks to balance acceptance of the principle of recognition and enforcement of foreign decisions with the preservation of domestic judicial sovereignty. In practice, this balance is maintained through conditions such as jurisdiction, compliance with procedural formalities, finality of the decision, and compatibility with public policy (Al-Nadawi, 1983; Kazem Jabr, 2008; Sami Muhammad, 1989). Nevertheless, the study indicates that this system likewise faces a risk of conflating public policy with domestic mandatory rules. If every inconsistency with domestic law is treated as a violation of public policy, enforcement of many foreign decisions would become impossible and the underlying purpose of judicial cooperation would be undermined. Examination of Iraqi sources and relevant instruments further demonstrates that Iraqi law, particularly in the context of inter-Arab relations and regional judicial cooperation, tends toward facilitating enforcement of foreign decisions, although such facilitation remains subject to control based on public policy (Al-Nadawi, 1983; Sami Muhammad, 1989). Accordingly, it is also possible to speak of international public policy in Iraqi law, the scope of which should be narrower than that of domestic public policy and should be invoked only in cases of serious conflict with fundamental principles.

4.3. Public Policy in International Instruments

Examination of international instruments demonstrates that public policy has neither been eliminated at the transnational level nor treated as an absolute obstacle; rather, its function has been defined as exceptional and limited. The 1958 New York Convention, in relation to the recognition and enforcement of foreign arbitral awards, treats incompatibility with the public policy of the enforcing country as a ground for refusing recognition and enforcement (Contini, 1956; Quigley, 1980; Sanders, 1979). The significance of this rule lies in the fact that the Convention preserves the public policy exception while treating it as a limited exception rather than as authorization for a complete review of the foreign award. Analysis of English-language scholarship suggests that in comparative law and international instruments, public policy is most commonly invoked when enforcement of the foreign award or decision would produce consequences that are manifestly unacceptable, incompatible with fundamental principles of fair procedure, or contrary to the essential values of the enforcing country (Bermann, 2014; Lu, 2007; Robertson, 2011). Under this understanding, public policy is not an instrument for reassessing the merits of the dispute but rather a mechanism for preventing severely incompatible consequences. This conclusion is highly significant to the present study because it demonstrates that the orientation of international instruments is consistent with a restrictive interpretation of

public policy. Regional Arab instruments, including the Convention on the Enforcement of Judgments among the States of the Arab League and the Riyadh Arab Agreement for Judicial Cooperation, likewise preserve the possibility of invoking public policy despite emphasizing facilitation of enforcement and strengthening judicial cooperation (Al-Nadawi, 1983; Sami Muhammad, 1989). These instruments indicate that even within legally and culturally related jurisdictions, states are unwilling to relinquish public policy control entirely; nevertheless, such control should remain limited and directed toward exceptional cases.

Taken together, these instruments indicate that the predominant international criterion for invoking public policy is a "manifest conflict" with fundamental principles rather than mere difference from domestic law or a local preference over a foreign rule. This finding is also consistent with contemporary doctrine emphasizing the prohibition of substantive review and the need for restrictive interpretation of the public policy exception (Bermann, 2014; Robertson, 2011).

4.4. Relationship of Iranian and Iraqi Law with International Instruments

Comparison of the findings concerning Iran and Iraq with international instruments demonstrates that both legal systems are consistent with the transnational approach insofar as they recognize public policy as a ground for refusing enforcement; however, in terms of conceptual clarity and criteria for application, they continue to lag behind the more precise and restrictive approach reflected in international instruments. Under international instruments, public policy generally operates as a final defensive safeguard designed to prevent manifestly unacceptable consequences rather than to protect every domestic rule (Lu, 2007; Sanders, 1979). By contrast, because Iranian and Iraqi domestic legislation does not provide a clear and differentiated definition of public policy, courts may conflate public policy with ordinary mandatory rules. Another significant finding is that, in both systems, a substantial part of the function of public policy concerns fair trial guarantees. Observance of the right of defense, proper service of process, impartiality of the adjudicatory authority, and the opportunity for effective participation by the parties are among the criteria that, if manifestly violated, may be characterized as conflicts with public policy (Khedri, 2015; Yaavari, 2004). This point is likewise consistent with the approach of international instruments because public policy in such instruments concerns not only the outcome of the judgment but also the process through which it was rendered. Furthermore, comparative analysis demonstrates that both countries possess the capacity to move toward an interpretation more closely aligned with international instruments. Such harmonized interpretation requires that:

- domestic public policy be distinguished from international public policy;
- refusal to enforce a foreign judgment be treated as exceptional and limited;
- the enforcing court refrain from reviewing the merits of the foreign judgment;
- the conflict be manifest, serious, and related to fundamental principles; and
- where possible, more proportionate solutions be employed instead of complete refusal of the judgment.

These results demonstrate that the principal common challenge facing Iran and Iraq is not the existence of public policy itself but rather the breadth and manner of its application. Both legal systems possess the necessary legal capacity to align themselves with the approach of international instruments, but such alignment requires greater precision in the conceptual and judicial articulation of public policy.

4.5. Summary of Findings

On the basis of the findings of this study, the following conclusions may be drawn:

1. Public policy is recognized in Iranian and Iraqi law as a ground for refusing enforcement of foreign civil judgments, but neither system provides a precise statutory definition or clear criteria governing its application (Al-Nadawi, 1983; Bahrami, 2016).
2. In both systems, public policy is associated more closely with fundamental principles, public morals, fair trial guarantees, and the foundational rules of the legal system than with every domestic mandatory rule (Al-Nadawi, 1983; Katouzian, 2010).

3. The approach of international instruments is based on a restrictive interpretation of public policy, prohibition of substantive reconsideration, and exceptional acceptance of refusal of enforcement (Bermann, 2014; Robertson, 2011).
4. In practice, a significant part of reliance on public policy concerns potential violations of defense rights and fundamental procedural safeguards rather than mere differences in the result or legal basis of the foreign judgment (Khedri, 2014; Yaavari, 2004).
5. The comparative conclusion is that, despite structural differences, both Iranian and Iraqi law can move toward facilitating the recognition and enforcement of foreign civil judgments by adopting the concept of international public policy and limiting the scope of domestic public policy.

5. Discussion and Comparative Analysis

Analysis of the research findings demonstrates that the recognition and enforcement of foreign civil judgments in Iranian and Iraqi law revolve around an enduring tension between two imperatives: preservation of national sovereignty and facilitation of international legal transactions. The public policy exception lies precisely at the intersection of these two imperatives. This section provides an in-depth discussion and analysis of the various dimensions of this concept on the basis of theoretical foundations, conceptual distinctions, legal doctrine, and comparison of the laws of the two countries with international instruments.

5.1. The Fluid Nature of Public Policy and the Need for Conceptual Distinction

Public policy is a dual-natured concept: on the one hand, it is related to domestic mandatory rules; on the other hand, in the international sphere, it encompasses a narrower domain. One of the most common interpretative errors in the domestic courts of Iran and Iraq in cross-border cases is the conflation of "domestic mandatory rules" with "international public policy." In purely domestic legal relations, public policy has a broad scope, and every mandatory rule from which individuals are not permitted to derogate by agreement—such as statutory limitations on interest rates or formal requirements governing the transfer of immovable property—may be regarded as an expression of public policy (Katouzian, 2010; Madani, 1996). In the field of private international law and at the stage of recognition and enforcement of foreign judgments, however, the scope of this concept becomes considerably narrower. Legal doctrine explains this distinction through the concept of "international public policy" (Seljoghi, 2006; Shahbazi-Nia et al., 2013).

In Iranian law, leading private international law doctrine has consistently emphasized that an Iranian court should not refuse enforcement merely because the legal basis of a foreign judgment conflicts with a domestic mandatory rule (Almasi, 2013; Nasiri, 1993). For example, if a foreign judgment confirms a financial obligation under the law of the rendering state that would not be accepted under Iranian law because of inconsistency with domestic protective legislation, such inconsistency should not automatically be treated as a violation of international public policy unless enforcement would seriously undermine the fundamental principles of the legal system or the overarching moral values of society (Sadeghi, 2005). The same legal reasoning is found in Iraqi doctrine. Iraqi jurists, in analyzing Article 6 of the Foreign Judgments Enforcement Law No. 30 of 1928 and subsequent legislation, have emphasized that the term "public policy" (*al-niẓām al-ʿāmm*) in the context of enforcement of a foreign judgment should be limited to the fundamental foundations of legislation and the public morals of Iraqi society (Abdulraza, 1989; Al-Nadawi, 1983). According to Iraqi doctrine, if every Iraqi domestic mandatory rule were treated as a criterion for refusing a foreign judgment, the judicial cooperation contemplated by Iraqi legislation would effectively become meaningless (Sami Muhammad, 1989). Comparative analysis therefore demonstrates that both Iran and Iraq theoretically recognize the distinction between domestic and international public policy; however, the principal challenge is the absence of an express statutory boundary that would assist judges in distinguishing these two domains.

5.2. Distinguishing Substantive and Procedural Public Policy in Comparative Practice

For a more precise understanding of the operation of public policy, it is necessary to distinguish its "substantive" and "procedural" dimensions. This distinction enables the enforcing court to assess the issue with greater clarity.

Table 1. Comparison of the Functional Distinction Between Substantive and Procedural Public Policy in Recognition and Enforcement

Type of Public Policy	Criteria of Assessment in Iranian and Iraqi Law	Prominent Examples in Practice and International Instruments	Degree of Acceptance in Comparative Doctrine
Substantive	Content of the decision, type of relief or obligation imposed, inconsistency with moral, religious, and constitutional values	Conflict with fundamental rules of inheritance, religious personal status rules, and excessive or usurious interest	Widely accepted as a safeguard for national and religious values (Al-Nadawi, 1983; Katouzian, 2010)
Procedural	Conduct of proceedings, protection of the right of defense, validity of service, impartiality of the rendering authority	Failure to provide actual notice to the defendant, deprivation of the right to counsel, violation of equality of arms	Fully consistent with international fair trial standards (Bermann, 2014; Yaavari, 2004)

Substantive public policy: This dimension concerns the nature of the right recognized in the foreign judgment. In Iranian and Iraqi law, because of the close relationship of personal-status and civil legislation with Islamic jurisprudence, particular sensitivity exists toward foreign judgments that undermine established religious principles. For example, foreign judgments concerning family relationships, adoption, or inheritance by a non-Muslim from a Muslim may have a significant potential to encounter the barrier of substantive public policy (Al-Nadawi, 1983; Almasi, 2013).

Procedural public policy: This dimension concerns fundamental principles of adjudication. Even where the substance of a foreign judgment is entirely legitimate, the judgment may not be enforceable if fundamental principles of fair trial were violated in the proceedings through which it was rendered. Under Iranian law, violation of the right of defense and failure to provide proper service of the statement of claim are regarded as violations of fundamental procedural principles and, consequently, may constitute incompatibility with procedural public policy (Azarbayejani & Samavati-Pour, 2014; Khedri, 2015). Under Iraqi law, enforcement and procedural legislation likewise emphasize actual service and observance of time limits for defense, and deprivation of the defendant's opportunity to present a fair defense may prevent enforcement of the judgment (Al-Nadawi, 1983; Kazem Jabr, 2008).

This distinction is also clearly reflected in international instruments. For example, under the 1958 New York Convention, Article V addresses procedural defects such as inadequate notice or inability to present a case as well as incompatibility with public policy, illustrating the importance of distinguishing procedural considerations from substantive ones in the ultimate assessment of foreign decisions (Contini, 1956; Sanders, 1979).

5.3. Comparative Analysis in Light of International Instruments: Prohibition of Review on the Merits and Restrictive Interpretation

One of the established principles of contemporary private international law is the prohibition of review on the merits (*révision au fond*) of foreign judgments by the enforcing court. The enforcing court should not assume the role of an appellate tribunal by reconsidering the correctness of the legal reasoning or the assessment of evidence undertaken by the rendering court (Bermann, 2014; Robertson, 2011). Public policy should not serve as a pretext for reopening the merits of the dispute.

In international instruments, application of the public policy exception is associated with the standard of "manifest conflict." This formulation appears in modern conventions concerning recognition and enforcement of judgments, including the 2019 Hague Judgments Convention, and in international jurisprudence in order to indicate that a simple conflict or theoretical difference between legal systems is insufficient to justify refusal of a foreign judgment (Bermann, 2014). The conflict must be so serious that it fundamentally offends the legal and judicial conscience of the enforcing state (Lu, 2007). Iranian and Iraqi law face a practical challenge in this respect. Article 169 of Iran's Civil Enforcement of Judgments Act provides that a foreign judgment must not conflict with laws relating to public policy; however, it does not employ limiting terms such as "manifest conflict." In practice, this may result in an Iranian judge refusing enforcement upon identifying even a relatively minor difference between the content of a foreign judgment and domestic mandatory rules (Shahbazi-Nia et al., 2013). A comparable

situation exists in Iraqi law. Although Iraqi commercial courts dealing with foreign arbitral awards have increasingly been influenced by the restrictive orientation associated with the New York Convention (Muhammad, 2012), the enforcement of foreign court judgments may still be affected by a broader understanding of *al-niẓām al-ʿāmm*, reflecting the continuing influence of domestic law on judicial reasoning (Al-Nadawi, 1983). Comparative evaluation therefore demonstrates that harmonization with international instruments requires judicial authorities in both countries to replace the criterion of "mere inconsistency with mandatory rules" with the standard of a "serious and manifest conflict with fundamental principles." Such a shift could contribute to the stability of judgments and enhance legal certainty in civil and commercial relations between Iran and Iraq.

6. Conclusion

The comparative examination of Iranian and Iraqi law in light of international instruments demonstrates that "public policy" is recognized in both legal systems as one of the most significant grounds for refusing recognition and enforcement of foreign civil judgments, although its scope and manner of application remain characterized by ambiguity and excessive flexibility. Although such ambiguity allows courts to respond to exceptional circumstances, in practice it may result in expansive and inconsistent interpretations and thereby reduce individuals' legal certainty (Al-Nadawi, 1983; Katouzian, 2010). The findings indicate that under Iranian law, Article 169 of the Civil Enforcement of Judgments Act conditions enforcement of a foreign judgment on its compatibility with public policy and good morals but provides no explicit criteria for determining such incompatibility. Consequently, the distinction between domestic and international public policy continues to exist primarily at the doctrinal rather than legislative level. Under Iraqi law, although civil procedure and enforcement legislation recognize inconsistency with public policy or good morals as a ground for refusing enforcement, as in Iran no clear and precise boundary has been drawn between ordinary mandatory rules and international public policy (Al-Nadawi, 1983; Shahbazi-Nia et al., 2013).

Examination of international instruments demonstrates that the dominant approach in transnational law is to interpret public policy restrictively and to refrain from reviewing the merits of foreign decisions. Within this framework, public policy may be applied only where there is a manifest and serious conflict with the fundamental principles of the enforcing country and may not become an instrument for reconsidering the substance of the dispute (Bermann, 2014; Robertson, 2011). This demonstrates that both Iran and Iraq possess the potential for greater alignment with international standards, provided that public policy is interpreted exceptionally, restrictively, and by reference to fundamental principles. From an analytical perspective, the most important conclusion of this study is that the principal problem is not the existence of public policy itself but the absence of controllable criteria governing its application. If courts can establish clearer distinctions between domestic and international public policy, as well as between substantive and procedural public policy, foreign judgments can be enforced with greater precision and fewer unnecessary obstacles. In this manner, a more appropriate balance may be achieved between safeguarding fundamental national values and realizing international judicial cooperation (Lu, 2007; Yaavari, 2004).

7. Recommendations

In light of the findings, the following recommendations may be proposed for improving the systems governing recognition and enforcement of foreign civil judgments in Iran and Iraq:

Formulation of clear statutory criteria for public policy: Legislatures in both countries should establish minimum and objectively assessable criteria for determining incompatibility with public policy in order to prevent fragmented and expansive interpretations.

Express distinction between domestic and international public policy: Legislation concerning enforcement of foreign judgments should expressly provide that mere inconsistency with domestic mandatory rules is insufficient to justify refusal of enforcement and that only a manifest conflict with fundamental principles may constitute such a ground.

Strengthening the procedural approach to public policy review: In assessing foreign judgments, greater attention should be paid to violations of the right of defense, improper service of process, and the absence of a fair trial, because these constitute

some of the most important manifestations of procedural public policy and are consistent with international instruments (Bermann, 2014; Yaavari, 2004).

Avoidance of substantive reconsideration of foreign judgments: Iranian and Iraqi courts, when considering enforcement of a foreign judgment, should refrain from reopening the merits of the dispute or reassessing the evidence and reasoning of the rendering court, except to the extent strictly necessary to determine whether there is a manifest conflict with public policy.

Harmonization with international and regional instruments: In interpreting domestic legislation, the standards reflected in the 1958 New York Convention and other instruments of judicial cooperation should be taken into account in order to facilitate more consistent enforcement of foreign judgments and decisions.

Expansion of judicial training and comparative legal scholarship: Specialized training for judges and researchers in international public policy, enforcement of foreign judgments, and judicial cooperation can contribute to reducing inconsistent interpretations and promoting greater stability in judicial practice.

Development of reasoned and published case law: Because one of the principal difficulties in this field is the scarcity of published decisions, systematic publication and analysis of relevant judgments could contribute to the development of more coherent judicial practice in both countries.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

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