

## The Effects of Choice of Court in Iranian Private International Law and Hague Convention 2005

*Mohammed Mjed Kabry\**

*Azam Ansari\*\**

Received Date: 28/09/2019 - Accepted Date: 12/04/2020

DOI: 10.22096/LAW.2020.115027.1548

### Abstract

Respect for the party autonomy principle has many various effects on private relationships at internal and international levels. The enforceability of choice of court agreements in the private international context is one of the most important effects of this principle. This effect has clearly been expressed in the law of some countries and the related international instruments. Recognizing such an agreement has effects on both the parties to the jurisdiction agreement and national courts. The article seeks to illustrate the effects of such an agreement. This article with the descriptive-analytical method and comparative approach with a focus on some national laws especially Iranian law and some related international instruments shows that recognizing the exclusive choice of court agreements has negative and positive effects on the parties and the courts. The negative effect is excluding the jurisdiction of the courts of one country and the positive effect is conferring the jurisdiction to the courts of another country.

**Keywords:** Party Autonomy; Exclusive Jurisdiction; Hague Convention 2005; Competent Court; Choice of Court Agreement.

---

\* M.A in Private Law, Department of Private Law, Ferdowsi University of Mashhad, Razavi Khorasan, Iran.  
Email: Kabry.mo@mail.um.ac.ir

\*\* Assistant Professor, Department of Private Law, Ferdowsi University of Mashhad, Razavi Khorasan, Iran.  
Email: aansari@um.ac.ir



## Bibliography

### A) Book & Articles

- Almanzalawi, Salehjad (2008). *Alikhtesas Alqadie Belmonazaat Alkhassa Aldowlya wa Aleiteraf wa Altanfiz Aldowli Lelahkam Alajnabia*, Cairo: Dar Aljamieaa Aljadyda Publication. [In Arabic]
- Alrubi, Muhammad (2008). *Dawr Alirada fi Tahdid Alaikhtisas Alqadaie Aldowly*, Cairo: Dar Alnahda AlArabia. [In Arabic]
- Brand, Ronald & Paul Herrup (2008). *The 2005 Hague Convention on Choice of Court Agreements commentary and documents*, Cambridge: Cambridge University Press.
- Briggs, Adrian (2015). *Civil Jurisdiction and Judgments*, 6<sup>th</sup> Edition, NEWYORK: Routledge.
- Clermont, Kevin M (2015). “Governing Law on Forum-Selection Agreements”, *Hastings Law Journal*, Issue 3, Vol. 66, pp. 643-673.
- Haddad, Hafiza (2010). *Alnazariya Alamma fi Alqanoon Alqadaie Alkhas Aldowly*, Vol. 2, Beirut: Alhalabi Alhoqooqia Publication. [In Arabic]
- Hartley, Trevor & Masato Dogauchi (2007). *Explanatory Report on the 2005 Hague Choice of Court Convention*, Hague: The Permanent Bureau of the Conference.
- Kabry, Mohammed Mjed & Azam Ansari (2019). “Fundamental Conditions of Jurisdiction Agreement in private international law”, *Journal of Legal Studies*, Vol. 11, No. 2, pp. 225-255. [In Persian]
- Keyes, Mary & Brooke Adele Marshall (2015). “Jurisdiction agreements: exclusive, optional and asymmetric”, *Journal of Private International Law*, Vol. 11, No. 3, pp. 345-378.
- Khaled, Hisham (2000). *Qawaed Alikhtisas Alqadie Aldowly wa Taaloqoha Belnezam Alaam*, Aliskandaria: Monshaet Almaaref. [In Arabic]
- -Khodabakhshi, Abdollah; Azam Ansari & Mohammed Mjed Kabry (2018). “Requirements for Enforcement of Foreign Judgments in Iranian and Egyptian law”, *Journal of private law*, Vol. 15, No. 2, pp. 349-372. [In Persian]
- Mafi, Hamayoun & Rashid Adabifirozjayie (2014). “Jurisdiction of Iranian courts in the field of private international law”, *Journal of Civil Law Knowledge*, Vol. 3, No. 2, pp. 48-63. [In Persian]
- Maghsoudi, Reza (2015). “Tavafoq bar Dadgahe Saleh dar Qarardadhaye Beinolmelali: Tojih va naqd Raviyeh Qazaie”, *Faslnameh Raie: Motaleaate Araye Qazae*, Vol. 4, No. 11, pp. 59-71. [In Persian]

- Mohajeri, Ali (2008). *MABSSOT Procedure Law*, Tehran: Fekrsazan Publication. [In Persian]
- Piri, Farhad (2017). *The Law of International Trade In Iran Jurisprudence*, Tehran: Jungle Publication. [In Persian]
- Salama, Ahmad Abdulkarim (2000). *Feqh Almurafaat Almadania Aldowlya*, Cairo: Dar Alnahda Al-Arabia. [In Arabic]
- Shams, Abdollah (2017). *Aeen Dadrasi Madani- Doreye Bonyadin*, Tehran: Derak Publication. [In Persian]
- Shayegan, Esmail (2018). *The Choice of Court Agreements in Private International Law*, Tehran: Sherkat sahmi Enteshar Publication. [In Persian]
- Tang, Zheng Sophia (2014). *Jurisdiction and Arbitration Agreements in International Commercial Law*, 1<sup>st</sup>Edition, NEWYORK: Routledge.

**B) Website**

- «Mada Haq Alqadaa Almasri fi Altakhalli an Ikhtesasehi fi Almonazaat Almadania wa Altejaria» (22/5/2019), Hisham Sadiq (2014). Available at: <http://cutt.us/uYLlma>.