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The Status of Foreign Law before the Algerian National Judiciary

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Abstract:

Foreign law occupies an important position before the Algerian national judge whenever the conflict-of-law rules stipulated in the Civil Code refer to it, especially in matters of an international nature such as personal status, contracts, and commerce. The judge is considered obliged to apply it as law and not as a fact. However, this obligation sometimes encounters difficulties related to proving the content of foreign law and interpreting it, particularly when the parties are unable to provide the approved texts or accurate translations. The judiciary also faces technical and institutional challenges, such as lack of training, absence of databases for foreign laws, and divergence in jurisprudence. Nevertheless, the application of foreign law allows for the enhancement of justice in private international relations. Developing evidentiary tools, updating legislation, and training judges remain essential factors for improving the effectiveness of the Algerian judiciary in this field.

Introduction:

The application of foreign law before the national judge is based on the fact that the competence of this law has been determined by order of the national legislator, who expressed his will in the conflict-of-law rule that refers to the application of this law. Foreign law retains its nature even though its application may take place outside the borders of the state that enacted it. Herein lies the importance of this topic in how the national judge deals with the competent foreign law pursuant to national conflict-of-law rules.

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Accordingly, we shall study this topic by posing the following problem: How does the national judge deal with the competent foreign law in terms of proving its content and interpreting it? From this problem several questions arise, namely: Is the national judge obliged to ascertain the content of foreign law on his own initiative, or does this burden fall upon the litigants? How is this law interpreted—according to the law of the state that enacted it or according to the law of the judge? In the event of an error in interpreting this law, does the Supreme Court have a role in supervising the correctness of its application and interpretation?

We shall answer this problem and the questions arising therefrom by relying on the descriptive and analytical method, through two main sections: in the first section, we address the status of foreign law before trial judges, and in the second section, the status of foreign law before the judges of the Supreme Court.

Chapter One: The Status of Foreign Law before Trial Judges

If the conflict-of-law rule referred to in national law determines the law applicable to the dispute, and this rule has a binding character that the judge must raise on his own initiative, the process of applying foreign law nevertheless requires addressing an important legal issue related to proving this law through specific means and determining the scope of its application and the ruling in the event that its content cannot be proven. This is what we shall address in the following subsections.

First Subsection: Searching for the Content of Foreign Law

Determining the foreign law competent to govern the conflict does not finally resolve the dispute; rather, it requires the judge to apply the law. This application presupposes that the national judge has sufficient knowledge of foreign law, which is an almost impossible matter, as it would impose on the judge what is beyond his capacity. Therefore, comparative legislations have not equated national law with foreign law in terms of knowledge of their content. The former is presumed to be known by the judge, who is obliged to apply it, failing which he would be deemed to have committed denial of justice. As for the latter, the burden of proving it falls on the party invoking it, unless the judge is knowledgeable of it.

Foreign law as a material fact:

Some legislations and judicial precedents have considered foreign law to be a material fact that the parties to the dispute must prove by all legal means. This traditional approach finds its justification in the following:

– The national judge does not raise it on his own initiative; the difference between national and foreign law lies in the presumption of knowledge. Presuming the national judge’s knowledge of

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foreign law is fraught with practical difficulties, especially when the law is unwritten or when judicial solutions concerning a single issue are fragmented. While national law does not require proof, foreign law must be proven and considered a material fact. If the application of foreign law were allowed without proof, the parties might be surprised by an unexpected solution; therefore, foreign law must be proven as facts are proven.

– Considering foreign law as a material fact is justified by the practical difficulties related to knowing foreign law and proving its content. This justification resonates in French and Lebanese law. For example, French jurisprudence, at a certain stage, came to consider that foreign law blends fact with law, and that the national judge may apply foreign law on his own initiative whenever he is knowledgeable of it.

Foreign law retains its legal nature and has a special procedural treatment:

This modern approach has been adopted by French jurisprudence, which affirms the legal nature of foreign law.

The modern approach is the one relied upon, as it places the issue in its true position, considering that the national conflict-of-law rule breathes life into foreign law and confers upon it a binding character. If the national judge is not informed of foreign law and the burden of proof is placed on the parties, this does not deprive the law of its legal nature, since material facts are proven by all means of proof, whereas foreign law does not accept proof by confession or oath. If the judge's function is to apply the law and we consider foreign law to be a fact, we could conclude that the judge applies a fact to facts. Moreover, failure to prove a fact entails dismissal of the claim, whereas failure to prove foreign law leads to the application of the judge's law, as stipulated in Article 23 bis of the Algerian Civil Code as amended in 2005.

In the dispute, the judge is bound by the factual elements as determined or agreed upon by the parties. By contrast, the parties' agreement on a particular interpretation of foreign law does not bind the court. The national judge's reliance on the parties to prove the content of foreign law does not alter its nature as law. This situation is similar to proving custom without denying its legal nature. If foreign law were a fact in the technical sense, the judge would not be able to intervene. On the contrary, when doubt arises regarding the validity of the foreign law presented to him, the judge has room to intervene.

Legal Means of Proving Foreign Law before the Trial Judge:

The judge plays a positive role in proving foreign law whenever he is knowledgeable of its content, and the parties also have a role in this regard. However, the proof intended here does not aim to

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subject foreign law to the rules of judicial evidence, as the means of proving this law have a certain specificity that distinguishes them from the legally defined methods of proving facts, without severing the connection between them. In this regard, some comparative legislations have not explicitly specified methods of proof, which has led the judiciary to exercise discretion in determining them. Comparative law has settled on the principle that proof may be made by all means that achieve the intended purpose. Accordingly, the judge may resort to the following legal means to ascertain the content of foreign law:

– **Customary certificate:**

Foreign laws may not be proven by witness testimony, as a witness usually testifies to what he has seen or heard of facts, whereas foreign law requires expertise, knowledge, and written data. However, in France, practice has developed whereby foreign law is proven through a written document issued by a person specialized in the provisions of foreign law or sufficiently knowledgeable thereof. This customary certificate is drafted in the language of the judge's state and may be issued by official bodies or by a person knowledgeable in foreign law.

a) Issuance of the certificate by the embassy or consulate of the foreign state whose law is to be proven:

This method has been adopted before Lebanese courts in a case where an attestation issued by the former Iraqi consulate in Beirut was used to prove Iraqi law. Such a certificate must be endowed with credibility before the judge to prove foreign law, and it must be translated if issued by a consular or diplomatic authority of a non-Arab state.

b) Issuance of the certificate by an ordinary person specialized in foreign law: Such a person is usually a lawyer, a foreign jurist, or a citizen knowledgeable in that state's law. The subject of the certificate may be the citation of legal texts or the interpretation of legal provisions with examples from judicial rulings. As for its evidentiary value, courts are often reluctant to rely on such certificates, as their author may be biased in favor of the party requesting them. Therefore, the judge has discretionary power to exclude this certificate if he considers that the jurisprudence it relies upon to prove foreign law is obsolete.

– **Expertise:**

The judge may, on his own initiative or at the request of the parties, seek expert assistance, whether oral or written. The former is common in English courts, which have excluded proof by witness testimony, considering it a form of oral expertise. The judge retains discretionary authority in assessing the expert opinion and the extent to which he is bound by it. If the expertise involves

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revealing the content of foreign law, the expert report must be discussed by both parties, in respect of the right of defense, so that foreign law is not applied in a way that may surprise the litigants.

– **Foreign law and its translation:**

When foreign legal texts are translated by a competent body or included in an approved academic work, the judge may rely on them to prove foreign law.

– **Doctrinal opinions:**

According to the doctrinal and judicial approach adopted in comparative law, the judge may rely in his search for the content of foreign law on books and references submitted in the case that study these laws through explanation and interpretation.

– **Judicial rulings:**

To ascertain the content of foreign law, trial judges may rely on previous judicial rulings issued in disputes similar to those before them, whether such rulings were issued by the national judge applying foreign law, by the foreign judge in the state of the law being proven, or by another foreign court. For example, Algerian courts may rely on a French judgment proving German law regarding adoption. However, a problem arises when the facts of the previous judgment differ from those of the case before the judge.

Finally, we emphasize that all the means listed are subject to the judge's discretionary authority and are used as indicative tools. The judge must observe the following: the judgment must include the means relied upon to prove foreign law, otherwise it may be challenged for insufficient reasoning. The judge must also justify disregarding any means by which foreign law was proven. To facilitate the judge's knowledge of foreign laws, these means may be expanded and emphasized to achieve sufficient knowledge of foreign laws.

The Necessity of Resorting to Legal Means to Facilitate Adequate Knowledge of Foreign Law:

It should be emphasized that neither the judge nor the parties alone should bear the burden of proving the content of foreign law; rather, adequate and sufficient methods should be provided to ensure the judge's knowledge of foreign law.

– **Conclusion of international agreements:**

In order to exchange information on laws, the state should adopt international agreements, whether bilateral or multilateral, to examine the content of the law of a contracting state.

– **The state's role in providing foreign laws:**

This may be achieved by establishing a scientific center for all foreign laws under the supervision of the Ministry of Justice, enabling the summoning of experts specialized in foreign laws before

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judges to discuss and prove the content of foreign law in ambiguous matters, and establishing a specialized institute of comparative law comprising a group of professors and researchers specialized in foreign laws, equipped with a translation unit.

– **Adoption of the concept of judicial delegation:**

Judicial delegation refers to a request by the delegating judicial authority to the delegated authority, judicial or diplomatic, based on reciprocity, to undertake an investigative measure, collect evidence abroad, or perform any other judicial act necessary to decide a matter pending before the delegating judge that he cannot perform himself within his jurisdiction. Judicial delegation is undoubtedly an effective means that enables the judge to seek assistance, provided the following are observed:

a) Resort to this means only when the national (delegating) judge is not knowledgeable of foreign law and cannot ascertain it, or when the submissions of the parties are conflicting or contradictory.

b) When the judge is unable to ascertain foreign law, he may resort on his own initiative to judicial delegation, provided that the parties are informed thereof, in respect of the adversarial principle.

c) The judge's obligation to apply national or foreign law is not a judicial act in the strict sense, since the essence of the judge's function is to apply the law to the dispute.

d) The foreign judge who, pursuant to the delegation, transmits the content of foreign law does so in his capacity as an expert.

Second Subsection: Interpretation of Foreign Law

If foreign law has been proven before the national judge as described above, the judge applies this law to the dispute before him in the manner and form in which it is applied abroad before the judicial authorities of the state that enacted it. The judge must adhere to the general principles governing the interpretation of this law in the state whose law is applied. In order to apply the law in the sense intended by its legislator, the judge must comply with the prevailing judicial interpretation in the state whose law is applied and verify the validity and effectiveness of foreign law abroad.

First: The National Judge's Adherence in Some Systems to the Judicial Interpretation Given in the State Whose Law Is Applied

The judge is obliged to interpret foreign law whenever the text is ambiguous or unclear in meaning and indication. However, this interpretation differs from interpreting national law. Here, the judge considers foreign law as a whole, in terms of its sources and the solutions established by foreign jurisprudence. The judge must ascertain the content of foreign law as derived from its official sources designated by the foreign legislator itself and the interpretations adopted by that state's

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judiciary. When interpreting foreign law, the judge is not empowered to assess its value or give it a different interpretation. This solution responds to the purpose for which conflict-of-law rules exist, namely to resolve private disputes of an international nature pursuant to the provisions of the competent foreign law. A legal text cannot be isolated from the body of principles and prevailing solutions in the foreign state that enacted it. This is the approach prevailing in French and Arab jurisprudence.

a) **The positive role of the judiciary when the foreign rule consists solely of the legal text:** In this case, there are no judicial applications to assist in interpreting the law, nor is there a foreign rule providing a solution to the dispute. What is the approach in this case?

– The national judge interprets foreign law without adhering to the interpretation given to national law. Rather, the interpretation that would be given by the foreign judge if the case were brought before him is followed. Moreover, the national judge is bound by the interpretation established by foreign jurisprudence for the applicable text, even if the text appears clear to him and the foreign judge's interpretation seems erroneous, because what is relied upon is not the intention of the legislator but the reality actually applied in the foreign state.

– When foreign law is silent on establishing an explicit solution to the dispute before the national judiciary, the judge must address the issue. In this case, the idea of interpretation does not arise, as the text to be applied does not exist. It is therefore necessary to search for the applicable legal rule by referring to the various sources recognized by foreign law. For example, if a dispute is brought before Egyptian courts and the applicable law is Algerian law, the Egyptian judge must refer to Article 1 of the Algerian Civil Code, which determines the sources of Algerian law.

b) **The positive role of the judiciary when the foreign rule admits conflicting interpretations in jurisprudence:**

When the national judge discovers that the legal rule to be applied to the dispute has been given conflicting interpretations by the judiciary in the foreign state, the national judge interprets the text while adhering to the general principles of the foreign state and tends toward the solution that is consistent with those principles, taking into account the doctrinal solutions adopted in the foreign state. The judge may seek the assistance of an expert to choose the most appropriate solution consistent with the general principles.

Second: Verification by the Judge of the Validity of Foreign Law

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Here, before addressing the issue of interpretation, the judge must examine the validity of the law in accordance with the general principles of the foreign state, and examine the constitutionality of the foreign law and whether this law is in force in terms of time.

A. Verification of the legal status of the rule to be applied

Here, the judge investigates the true nature of the legal rule whose application is presented before him. Foreign law is not composed of legislation alone, but of everything considered by the foreign legislator as law. If the foreign legislator does not recognize custom as a source of law, the judge must not take custom into account.

B. Verification by the judge of the constitutionality of the foreign law

In this case, does the national judge examine the constitutionality of the foreign law to be applied in accordance with the constitution of the state that enacted it? For example, if a dispute is brought before the Algerian judge and the applicable law is French law, and the parties raise the unconstitutionality of this applicable law pursuant to the conflict-of-laws rule, does the judge examine the issue of constitutionality even though the Algerian judge does not possess such authority with regard to the rules of his own national law? The answer to this requires distinguishing between formal review and substantive review.

Formal review of the constitutionality of foreign law

Some constitutions require formal conditions for the validity of the foreign legal rule to be applied, whether in terms of its existence or its entry into force, such as ratification and publication, or the lapse of a period of time from the date of its issuance for it to enter into force. These procedures and formalities do not raise problems in doctrine or jurisprudence. The judge must ascertain that these requirements imposed by the constitution of the state that enacted the law have been fulfilled. If one of the conditions of the legal rule is missing, this means its non-existence.

Substantive review of the constitutionality of foreign law

In this case, the judge before whom the dispute is brought and who decides it pursuant to a foreign rule must provide a solution similar to the one actually applied in the foreign state that enacted it. In this case, the judge must take into account the following: if the foreign law of the state whose law is invoked before the national judiciary does not allow substantive constitutional review of laws, the judge may not undertake review of the foreign law even if it appears to him that the text he applies is contrary to the constitution of the foreign state. If the foreign legal system grants constitutional review of laws to a specific authority, the judge may not examine its constitutionality unless that

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authority has already ruled on its constitutionality. However, if the foreign law allows ordinary courts to exercise constitutional review, there are two opposing trends:

The first trend

The judge does not have the right to review the constitutionality of foreign law. Their argument is that granting the judge constitutional review ultimately means interference in the exercise of foreign legislative authority, which violates the principle of sovereignty and independence of each state. Granting such review to the judge also means engaging in a political initiative aimed at refusing to apply an order issued by the foreign legislative authority.

The second trend

The judge has the right to review the constitutionality of foreign law. The prevailing doctrine holds that the judge should be given a role in constitutional review whenever ordinary courts in the foreign state whose law is applied are able to exercise such review, in cases where the foreign judiciary has not actually ruled on the constitutionality of the law.

Verification by the judge of the entry into force of foreign law

In this case, we seek to examine the foreign law to be applied as indicated by the connecting rule, especially if the issue at hand is governed by two laws during the period between the date of its occurrence and the date of adjudication of the related lawsuit. What is the law to be applied to resolve the problem of temporal conflict between foreign laws? Regarding this issue, there are two opposing trends:

1. **The solution lies in applying the rules of temporal conflict in foreign law:**

Comparative doctrine and jurisprudence hold that determining which substantive foreign rule applies in terms of time is a matter determined by reference to the prevailing principles in the foreign state whose law is applied. The solution to this issue should be uniform and not vary according to the internationally competent judge. Proper application of foreign law requires taking into account its three elements: persons, place, and time, as granted to it by its drafter (the foreign legislator).

2. Solving the problem by reference to the rules of private international law of the judge's state:

Some contemporary jurists consider that temporal conflict in foreign law is resolved by reference to the law of the judge, meaning the rules of his private international law. This means that the idea of spatial conflict of laws affects the resolution of temporal conflict between substantive rules in

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foreign law. This opinion is weak, while the first opinion is the prevailing one. But what is the solution if it is impossible to prove the content of the foreign law?

The third requirement: Possible solutions when it is impossible to prove the content of foreign law

If the national judge is aware of the foreign law and raises it on his own initiative, or if the burden of proof lies on the litigants, and they succeed in proving it, no problem arises and the foreign law is applied and interpreted as presented. However, if the parties fail to prove it, the judge then reasons his judgment and applies the law of his state. The situation we face is the failure of the party invoking foreign law to prove its content, as required by the judge, without providing evidence of the impossibility of such proof. According to Lebanese law, the court rules to stay the proceedings for a specified period determined by it, during which it obliges the person to provide proof of the foreign law.

Accordingly, we say that if the judge fails to ascertain the foreign law after exhausting all means, he must include this impossibility in his judgment. When the matter is not governed by a text, or when there is a text but jurisprudence is scarce, or when judgments exist but are contradictory, the national judge places himself in the position of the foreign judge and seeks the solution that the foreign judge would have rendered had the dispute been brought before him. There are differing trends regarding the stance to be taken when it is impossible to prove the content of foreign law.

1. **Rejection of the claim or request**

According to this trend, when it is impossible to ascertain the content of foreign law, the judge must reject the claims. This approach was adopted by U.S. case law in the Walton case. The facts are summarized as follows: an American citizen, Walton, was injured in a collision between his car and a transport vehicle belonging to an American company in the Kingdom of Saudi Arabia. Walton filed a claim for compensation for damages resulting from the accident before the federal courts of the State of New York against the company. In the first stage, neither party invoked the application of Saudi law, which was competent for the dispute as the place where the harmful act occurred. However, Judge Bricks raised the application of Saudi law on his own initiative, but he was unaware of the content of this law and asked Walton to prove it. Walton made no attempt to prove Saudi law, so the court rejected his claim. The judgment was upheld on appeal. Doctrine criticized this trend, considering it a denial of justice and an infringement of the injured party's rights merely because he was unable to prove foreign law.

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2. Application of the law closest in its provisions to the competent foreign law

When the applicable law is determined but its content cannot be proven, the judge must apply the closest law, meaning the law presumed to be closest in its provisions to the law whose content cannot be proven, due to belonging to the same legal family or due to existing influence between them. If the competent law is American law, it is replaced by English law. The second meaning of the closest law refers to the law most closely connected to the relationship after the law whose content cannot be proven. For example, applying the law of the person's domicile regarding capacity if it is impossible to prove the content of the law of nationality. This trend gained acceptance in German jurisprudence, but it is surrounded by practical difficulties, particularly in verifying the degree of proximity between different legislations.

3. Application of the law of the judge when it is impossible to prove the content of foreign law

In domestic law, the judge may not refrain from adjudicating on the grounds of ambiguity or lack of clarity of the text. The judge has a duty to decide disputes involving a foreign element as if he were deciding national disputes. This constitutes an obligation on the judge since he applies a law not published in his state. He applies the law of the judge not because its provisions correspond to the content of foreign law, nor because the الأصل is to apply the law of the judge, but because this law applies by virtue of its general residual jurisdiction when it is impossible to ascertain the content of the foreign law competent for the international dispute pursuant to the connecting rule. Applying the law of the judge is a fair solution because it spares the parties the negative consequences of rejecting their claims, and on the other hand, it is a law not foreign to the dispute at hand. The application of the law of the judge is supported by the purpose of the conflict-of-laws rule. This third trend is applied in some comparative legislations such as Lebanon and Algeria, according to Article 23 bis of Law 10/2005 amending the Civil Code.

Chapter Two: The status of foreign law before judges of the Supreme Court

The national judge raises the conflict-of-laws rule on his own initiative as an obligation imposed by the national legislator, or the parties may prove the content of foreign law. However, it may occur that the national judge misapplies this law. In this case, is his decision subject to review by the Supreme Court? We answer this question through the following requirements.

The first requirement: Review of the application of the connecting rule

If the conflict-of-laws rule is a national rule, the judge is obliged to apply it as a directive from his legislator. If an error occurs in applying the conflict-of-laws rule, comparative doctrine holds that it is subject to review by the Supreme Court. If the claimant argues that the contested judgment failed

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to apply the competent law due to incorrect interpretation of the conflict-of-laws rule, the court reviews that interpretation. An example is when the judge deviates in interpreting the rule and applies his own law instead of foreign law, or applies the law of domicile in a matter of personal status instead of the law of nationality. In such cases, an error in application or misinterpretation may be invoked. It should be noted that the Supreme Court's review of errors in applying or interpreting the connecting rule constitutes a general review governing all rules related to financial transactions or personal status.

In Algeria, however, this has been limited to personal status pursuant to Article 358, paragraph 6, of the Code of Civil and Administrative Procedure: "An appeal in cassation shall be based only on one or more of the following grounds: … 6- violation of foreign law relating to family law."

The second requirement: Error in characterization

Characterization is a legal process aimed at determining the nature of the issue raised by the dispute—essentially a legal classification—to determine the conflict-of-laws rule governing it and thus reach the applicable (competent) law. Judges of fact have absolute authority in assessing the facts in the process of characterization, which falls outside the review of the Supreme Court. However, assigning the correct legal description to the facts must be subject to review, as it is a legal process. For example, determining the existence of fault by the person causing damage is assessed by the judge based on facts and is not subject to review, whereas determining the type of liability—whether tortious, subject to the law of the place where the harmful act occurred, or contractual, subject to the law of will—is a process subject to review.

Section Three: Review of the interpretation of foreign law

We emphasize at the outset that the position of legislation and judiciary in comparative laws varies between supporters and opponents of review.

1. Rejection of review (the position of the Courts of Cassation in France and Lebanon): The doctrine adopted in France and Lebanon holds that there is no review of the interpretation of foreign law. This principle is also entrenched in Germany, Spain, the Netherlands, Romania, and some Arab countries such as Tunisia and Morocco. This trend is supported by several arguments:

- Foreign law is a material fact that must be proven; as such, it is not subject to review by the Supreme Court, which follows the trial court.
- The task of the Supreme Court is to unify the application of national law, while supervising the coordination of foreign judgments is the task of the Supreme Court in the foreign state whose law is applied.

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- The Supreme Court is authorized to review the interpretation of national laws, not foreign laws, to avoid error and deviation from the content of foreign law.
- Granting review to the Supreme Court would place it in conflict with the judgments of the foreign Supreme Court in the state that enacted the law.

2. Acceptance of review (the doctrine of Egyptian jurisprudence and some Arab and foreign legislations):

Errors committed by trial judges in interpreting foreign law are subject to review by the Supreme Court. This is adopted in Italy, Turkey, Greece, Egypt, Kuwait, Jordan, and the United Arab Emirates. Proponents of this doctrine rely on the following grounds:

- Granting the Supreme Court authority to review trial judges' interpretation and application of the connecting rule entails completing the chain of supervision and review of the interpretation of foreign law.
- One of the functions of the Supreme Court is to unify judicial precedent, and to achieve this task, it must impose its review on the interpretation of law, whether national or foreign.
- Subjecting the interpretation of foreign law to Supreme Court review is consistent with the requirement that foreign law be law in the full sense of the word; it is not a material fact and should not be deprived of correct application by providing Supreme Court review of its interpretation.

Egyptian jurisprudence has adopted this trend, and the Court of Cassation has established it and extended its review to the interpretation and application of foreign law.

3.Mitigating the absolute rejection of review through certain mechanisms:

We previously mentioned that France and Lebanon reject review. However, an examination of judicial decisions in these systems shows that the Supreme Court exercises actual review over the interpretation of foreign law through the following mechanisms:

- Review of reasoning entails review of interpretation: when parties present foreign law as a means to support their claims, the court exercises a degree of review.
- Review through respect for the adversarial principle between the parties: when the national judge interprets foreign law, such situations have been established by the Lebanese Court of Cassation, which reviewed interpretation through scrutiny of reasoning.
- Review of the interpretation of foreign law through the concept of distortion or denaturation: the concept of distorting or denaturing foreign law was developed by the French Court of Cassation to review misinterpretation of foreign law. The concept is borrowed from the field

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of contracts and documents in litigation. In contracts, cassation jurisprudence consistently holds that their interpretation falls outside the scope of review when their terms lack generality, as is the case with standard contracts and insurance documents; interpretation then falls within the discretionary power of trial judges. However, distortion is subject to review by the Supreme Court when trial judges depart from a clear contractual term.

Conclusion:

It is evident from the study of the status of foreign law before the Algerian national judge that the Algerian legislator has adopted an open approach to applying foreign law whenever referred to by connecting rules, reflecting the compatibility of national legislation with the requirements of international private relations. However, practical judicial application reveals a number of difficulties, most notably proving the content of foreign law, differing methods of its interpretation, and the lack of unification of judicial precedent in this field.

Moreover, the absence of clear institutional and technical mechanisms for obtaining foreign texts or verifying their authenticity has led to significant disparities among courts in handling this type of case, affecting legal certainty for litigants.

Based on the findings, a set of recommendations can be proposed to improve the performance of the Algerian judiciary in dealing with foreign law, as follows:

First: the necessity of introducing explicit legislative provisions determining the burden of proving the content of foreign law, while enabling the judge to redistribute this burden according to the parties' capacities and access to foreign legal information.

Second: establishing new legal rules obliging the Algerian judge to follow the method of interpreting foreign law adopted in its original jurisdiction, and creating national advisory committees specialized in comparative law to assist when necessary.

Third: developing the structural framework of courts by establishing legal support units specialized in obtaining and translating foreign legal texts, and providing digital mechanisms for communication with embassies and foreign judicial bodies.

Fourth: strengthening specialized training for judges through continuous training programs in conflict of laws, comparative law, and mechanisms for researching foreign legal texts, with the integration of applied courses within the Higher School of the Judiciary.

Fifth: working on digitizing procedures for requesting foreign legal texts, creating a national database of the most frequently applied foreign laws, and unifying judicial precedent through the periodic publication of decisions relating to the application of foreign law.

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Sixth: granting the judge more consistent discretionary authority through precise criteria for assessing the proof of foreign law and the accuracy of its translation, thereby reducing judicial errors and enhancing legal certainty.

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