

Recognition and enforcement of foreign judgements in the territory of Russia

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Stable international cooperation in the area of trade and civil turnover is only possible where foreign counterparties and businessmen are confident about protection of their rights in the territory of a foreign state.

One of the guarantees is the mechanism for recognizing and enforcing foreign judgements in the territory of Russia.

As repeatedly noted by the Constitutional Court of the Russian Federation, in particular, in its Resolution No. 11-P, dated 14 May 2012, protection of violated rights cannot be recognised as valid, if the respective judicial act or act of another authority is not executed in time.

These requirements are consistent with Article 2 of the International Covenant on Civil and Political Rights, which obliges States to ensure that any person, whose rights and freedoms are violated, has effective remedies, as well as with Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the interpretation by the European Court of Human Rights. Thereat, the European Court of Human Rights believes that the execution of a judgement rendered by any court shall be treated as an integral part of the 'court' in the sense of this article, and that everyone's right to judicial protection would become illusive, if the legal system of the state allowed a final, binding judgement remaining inoperative to the damage of one of the parties (Resolutions, dated 19 March 1997, in the case of Hornsby against Greece, 7 May 2002 in the case of Burdov against Russia, 27 May 2004 in the case of Metaxas against Greece, 29 March 2006 in the case of Mostacciuolo against Italy (No. 2), 15 February 2007 in the case of Railyan against Russia, etc.).

In the territory of the Russian Federation, recognisable and enforceable shall be judgements on the establishment of exclusively private rights, while enforcement of decisions on the establishment of public rights are refused by courts.

The current legislation, however, provides for two independent procedures.

In accordance with Chapter 31 of the Arbitration Procedural Code of the Russian Federation (hereinafter - the 'Arbitration Code'), recognisable and enforceable shall be decisions of foreign state courts, arbitration courts and international commercial arbitrations made in disputes and other cases arising in the course of doing business and other economic activities.

All other foreign judgements in the area of civil proceedings are recognised and enforced within the framework of Chapter 45 of the Civil Procedural Code of the Russian Federation (hereinafter - the 'Civil Code').

In accordance with Russian legislation, this kind of recognition and enforcement is only possible if there is an international treaty; the established court practice, however, shows that judgements recognition is also possible even in the absence of the treaty.

For instance, there is no treaty between Russia and England on mutual recognition of judicial decisions, as well as other mutual assistance in civil cases. However, in the territory of both states, the decisions are mutually recognised and enforced on the basis of the principle of international courtesy (Ruling of the Supreme Court, dated 1 February 2016, on case No. 305-ES15-18289).

The procedural order of enforcement of foreign decisions is regulated by the above chapters and provides for the need to file an application (petition) in writing with the competent authority and required documents. Such an application (petition) is considered in open court hearing with obligatory notification of persons participating in the case. Please note that the review of the

foreign judgement on merits is not allowed. Following the consideration of the application (petition), the court issues a ruling on the enforcement of the foreign judgement or refuses to do so.

The grounds for refusal to enforce a foreign judgement are provided for in Article 244 of the Arbitration Code and Article 412 of the Civil Code.

When applying to the court, the issue of identifying such grounds for refusal as a contradiction to the public order of the Russian Federation is of particular practical importance. The difficulty is that the concept of 'public order' is not disclosed in any regulatory legal act of our state.

The variability in the judicial discretion in this matter leads to numerous cancellations.

For instance, the Ruling of the Arbitration Court of the Moscow District dated 19 January 2017 on case No. A40-60583/2016, and the Ruling of the Supreme Court of the Russian Federation, dated 4 September 2017 on case No. 305-ES17-993 are reasoned by reference to paragraph 1 of the information letter; the judging teams, however, come to absolutely opposite conclusions. The Supreme Court of the Russian Federation notes that "an element of public order is, inter alia, the right of everyone to a court and the option to limit this right on own discretion by applying alternative methods of dispute settlement, including applying to international commercial arbitration" and repeals the decision of the Arbitration Court of Moscow city, Arbitration Court of the Moscow District and sends the case for a new consideration.

The Supreme Court of the Russian Federation in its Ruling, dated 27 September 2017 on case No. 310-ES17-5655 specifies that the generally recognised principle of legality is an element of the public policy of the Russian Federation. Decisions of the lower courts were abolished, the recognition and enforcement of the foreign arbitral award was refused. At the same time, please note that in the first, appellate, and cassation instances the defendant repeatedly stated the contradiction to the public order, the courts, however, with the reference to the same paragraph of the Information Letter, did not see any violations.

Thus, we can state that in the lack of detailed regulation and with the existence of ambiguous judicial practice, the cases of recognising and enforcing foreign judgement in the territory of the Russian Federation are classified as complex ones.

They require a particularly careful approach in preparing for the court proceedings, as well as detailed analysis to identify a ground for refusal such as a contradiction to the public policy of the Russian Federation.