

Arbitration practice of recognition and execution of foreign arbitration decisions on economic disputes in the Russian federation

Abstract

The author considers the process of recognition and enforcement of decisions of foreign arbitration courts in the Russian Federation in order to identify problems arising in arbitration proceedings in the performance of foreign arbitral awards. The article deals with the characteristic features of application of the international multilateral treaties ratified by the Russian Federation and regulating process of recognition and enforcement of the foreign arbitration award. The author analyzes other grounds for recognition and enforcement of a decision of a foreign arbitration court, except for international treaties. The article substantiates the idea that the Russian arbitration practice in the category of cases specified in the article develops and improves. On the basis of the research, the author concludes that at present Russian arbitration courts often refer to the principle of international courtesy and the principle of reciprocity in considering the application of companies for recognition and enforcement of foreign arbitral awards. The issue of procedural features related to the provision of evidence to ensure the principle of reciprocity continues to be debated.

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Mini review

Judicial acts of any state operate within the territory under its jurisdiction. In the Russian Federation the conditions for the recognition and enforcement of judicial acts of a foreign state are stipulated in Chapter 31 of the Arbitration Procedural Code of the Russian Federation (hereinafter referred to as the “APC of the Russian Federation”),¹ which can be called “international enforcement proceedings”.²

In accordance with Article 241 of the APC of the Russian Federation, “decisions of foreign courts, rendered in disputes and other cases arising in the course of entrepreneurial and other economic activity (foreign courts), awards of arbitration tribunals or of international commercial arbitration courts, adopted on the territory of foreign states in disputes and other cases, arising in the course of entrepreneurial and other economic activity (foreign arbitration awards), are recognized and enforced in the Russian Federation by commercial courts, if the recognition and enforcement of such judgments is stipulated in an international treaty of the Russian Federation and in federal law”.¹

Despite the fact that in the Russian legal system, the principles of recognition and enforcement of foreign judgments are traditionally regulated by the APC of the Russian Federation and other legislative acts, there are problems associated with some vagueness or incompleteness of legislative regulation, a different interpretation of the law by different courts. To solve this problem, several international treaties have been ratified, which have created an effective mechanism ensuring the real enforceability of foreign arbitral awards. However, these international agreements have not created a uniform regime for enforcement of arbitral awards.

At the moment there are a number of international treaties that provide for the recognition and enforcement of foreign arbitral awards. Russia is a party to the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter the “New York Convention of 1958”). In accordance with Article III of the Convention

“Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles”.³

In the practice of Russian arbitration courts on economic disputes, the New York Convention of 1958 was repeatedly applied. So, in the decision of the Presidium of the Supreme Arbitration Court of the Russian Federation (hereinafter referred to as “SAC of the Russian Federation”) No. 9899/09 dated September 13, 2011, the arbitration court, having examined the application of the company “Stena RoRo AB” (Sweden) for supervisory review of the decision of the Arbitration Court of the City of St. Petersburg and the Leningrad Region dated 20 February 2009 and the judgment of the Federal Arbitration Court of the North-West District of St. Petersburg dated 24 April 2009 and recognized a violation of the provisions of the New York Convention of 1958 in the part contrary to the public policy of the Russian Federation decided to recognize and enforce the decision of the Arbitration Institute of Stockholm Chamber of Commerce dated 24 September 2008 granting the claim of the company «Stena RoRo AB» (Sweden) to JSC «Baltiysky Zavod» on recovery of money.⁴

The Russian arbitration courts often applied the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Cases of November 15, 1965 (hereinafter the “Hague Convention of 1965”).⁵ Such practice seems to be interesting. For the Russian Federation, the Hague Convention of 1965 entered into force on 01 December 2011, taking into account the statements made by our state upon accession to it. In the judgment of the SAC of the Russian Federation №3366 / 13 dated 28 January 2014 the judges quashed the decision of the Arbitration Court of Moscow of 31 August 2012 and of the Federal Arbitration Court of Moscow Region of 29 November 2012 on recognition of the default judgment of the foreign court dated 24 November 2010 on recovering money from CJSC “Corporation” UNI” in favor of the companies “Nortel “NetWorx Yu-Kay Limited” and “Nortel NETWORKS Island Limited” and its enforcement, pointing to the violation of the procedure of notification of the parties

of the proceedings provided for statements of the Russian Federation made upon accession to the Hague Convention of 1965.⁶

The foreign arbitral awards on economic disputes are executed in accordance with multilateral treaties on legal assistance. Within the framework of CIS, the Minsk Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases of 22 January 1993 (ratified by Federal Law No. 16-FZ of 04.08.1994 "On Ratification of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases), which stipulates that "Each of the Contracting Party, under the conditions determined by the present Convention, must recognize and execute the following decisions taken on the territories of other Contracting Parties: a) decisions of judicial organs on civil and family affairs, including agreements of peace confirmed by a court and notarial acts concerning financial obligations (decisions, in what follows); b) court decisions on criminal cases of recompensing damage".⁷

Another agreement concluded by the CIS member states on March 20, 1992, directly related to the consideration of economic disputes, "Agreement on procedure for the dispute resolution, connected with implementation of economic activities" (hereinafter referred to as the "1992 Kiev Agreement"), ratified by the resolution of the Supreme Council of the Russian Federation of 09 October 1992, No. 3620-1.⁸ Arbitration courts of the Russian Federation apply to this agreement when considering disputes on economic issues. In particular, on 26 April 2011, in a case concerning the supervisory review of the decision of the Arbitration Court of the Orenburg region dated 06 July 2010 and the judgment of the Federal Arbitration Court of the Ural District dated 28 September 2010 SAC of the Russian Federation applied the provisions of the 1992 Kiev Agreement when considering the appropriate notice of the proceedings part and decided to recognize and enforce a default judgment of the Specialized inter-district economic court of Karaganda region dated 21 December 2009.⁹

The Russian Federation concluded bilateral agreements on legal assistance in civil, family and criminal cases. Such agreements are in force with Argentina, Hungary, Egypt, Italy, Spain, Cyprus, Latvia and other countries. Unfortunately, Russia does not have legal aid contracts with many foreign countries. This creates certain problems related to the protection of individuals and legal entities, including on economic disputes, as well as the lack of mutual trust between states.¹⁰

In the absence of a multilateral international treaty, the execution of a decision of a foreign arbitration court is possible due to special agreements between the states. In particular, according to Article 1 of the Agreement between the Republic of Belarus and Russian Federation on procedure for mutual execution of court resolutions of economic courts of the Republic of Belarus and Arbitration Courts of the Russian Federation dated 17 January 2001 (ratified by the Federal Law of 11 July 2002 No. 90-FZ "On ratification of the Agreement between the Republic of Belarus and Russian Federation on procedure for mutual execution of court resolutions of economic courts of the Republic of Belarus and Arbitration Courts of the Russian Federation on 17 January 2001) "Court resolutions of competent courts of the Parties do not need the special procedure of recognition and court resolutions of courts of the state based on executive documents of the courts which made decisions are performed in the same procedure, as".¹¹

The practice of some arbitration courts of the Russian Federation demonstrates the possibility of recognition of a foreign judgment and

its enforcement on the basis of reciprocity and international comity. For example, in its decision of 16 March 2017 on recognition and enforcement of a foreign judgment the Moscow City Arbitration Court stated that "the Order of the England and Wales High Court of Justice dated 23 November 2012 is subject to enforcement on the territory of the Russian Federation in accordance with the principles of reciprocity and international comity. The principles are universally recognized principles of international law and are part of the legal system of the Russian Federation under Article 15 of the RF Constitution. The principle of international courtesy prescribes states to treat foreign law and order politely and courteously, while the principle of reciprocity implies mutual respect by the courts of different states of each other's judgments. In the Russian Federation and England there is a principal opportunity and a stable practice of recognizing judgments of each other on the basis of the principle of reciprocity. Thus, the English courts have repeatedly recognized and enforced Russian judgments".¹²

The similar wording was used by arbitration courts in other cases. In particular, in the decision of the Moscow Arbitration Court dated 30 May 2014 on recognition and enforcement of the decision of the England and Wales High Court of Justice of April 30, 2013,¹³ in the decision of the Arbitration Court of the Rostov Region of July 20, 2015 on recognition and enforcement of the arbitral award rendered on 08 December 2014 by the arbitrator of the London Maritime Arbitrators Association,¹⁴ in the decision of the Arbitration Court of the Stavropol Region dated 21 April 2016 on recognition and enforcement of the decision of the Supreme Arbitration Court of the Republic of South Ossetia of July 26, 2013,¹⁵ in the decision of the Moscow Arbitration Court of September 26, 2016 on recognition and enforcement of the London Court of International Arbitration dated 21 December 2015.¹⁶

Based on the explanations above it can be concluded that the process of recognition and enforcement of foreign arbitral awards in arbitration courts of the Russian Federation is sufficiently regulated at the normative level. Moreover, Russian arbitration practice follows the way of expanding the list of conditions for recognition and enforcement of foreign arbitral awards in the absence of international multilateral or bilateral treaties. In particular, a foreign arbitral award is recognized and enforced on the territory of the Russian Federation on the basis of the principle of reciprocity. At the same time, there are procedural difficulties associated with the need to submit to the arbitration court evidence of the implementation of the principle of reciprocity, which can be eliminated by including this principle in the Arbitration Procedural Code of the Russian Federation.

It is necessary to improve the activities of law enforcement agencies in this area, a clear definition of the position of the Supreme Court of the Russian Federation on the recognition and enforcement of foreign judgments in the absence of an international treaty with the state whose court ruled, as well as positions on applying the principle of reciprocity in the civil process.

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None.

Conflict of interest

The author declares no conflict of interest.

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