

## **Russian State Commercial Court Enforces a Judgment of a US NY District Court**

*The State Commercial Court of the city of Moscow has ruled to enforce a judgment of a New York State District Court in the absence of a treaty between Russia and the USA covering issues of legal assistance/mutual recognition and enforcement of judgments.*

In many instances when foreign parties contract with the Russian companies, foreign law is chosen to govern such contracts and non-Russian courts and arbitration institutions are chosen to resolve disputes arising out of or in connection with such contracts. However, if a foreign counterpart in such contract intends to sue the Russian party, it must always remember that in order to recover the amounts awarded or adjudged, (unless the Russian party has sufficient assets abroad), it will have to seek recognition of the arbitration award or judgment from a Russian court. By itself, procedure of recognition and enforcement is formal and rather simple.

Enforcement of arbitration awards, in majority of cases, is effected in accordance with the 1958 NY Convention, which is directly applied; enforcement of arbitration awards is, therefore, relatively easy and the number of successful recognitions is significant. However, as far as the enforcement of foreign judgments is concerned, the Russian procedural law provides that foreign judgments can be recognized and enforced in Russia *“if recognition and enforcement of such judgments is provided for by an international treaty, to which the Russian Federation is a party, or a federal law”* (paragraph 1, article 241, Commercial procedure Code). In most cases, the courts still apply formal interpretation of this provision and consider that the recognition and enforcement is only possible, if there is exists an international treaty between Russian Federation and a relevant state, which expressly provides for recognition and enforcement of judgments.

There have been examples of a less formal approach to that procedural rule in practice of the Russian courts, which lead to successful enforcement of judgments of the Dutch and English courts. In these cases, the Russian judges based their decisions on international conventions and treaties which stipulate an individual's right to a fair and public consideration of his/her case by an independent and unprejudiced court, in particular, on Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 (paragraph 1 article 6) and considered that by recognizing and enforcing a judgment passed by any court of the state which is party to that Convention, the Russian would uphold the relevant provisions of the Convention. Also, in 1994 the Russian Federation entered into the *“Agreement on Partnership and Cooperation Establishing a Partnership between the Russian Federation, on the one part, and the European Communities and their Member-States, on the other part”* with a number of European countries. Under this agreement, each party undertook to provide for the other party's individuals and legal entities free access to the competent courts in the same regime as is applied to the nationals of such party and a formal refusal to enforce foreign judgments due to the absence of a specific treaty on issues of enforcement was considered to be a violation of the individual's' fundamental right of access to fair trial, which is also guaranteed by article 46 of the Russian Constitution.

It must be pointed out that United States are not a party to either one of the above-mentioned treaties instruments and there is no bilateral treaty between the Russian Federation and the US covering issues of recognition and enforcement. As far as it is known, previously there have been no cases of enforcement of judgments of the US courts on commercial matters in the Russian Federation. However, in November 2011, the Commercial Court of the City of

Moscow found it possible to enforce a US judgment on the grounds of the principles *comitas gentium* and reciprocity.

The case was as follows. A US shipowning company entered into an insurance contract with a Russian insurer. The contract provided for US jurisdiction. Upon occurrence of the insurance event, the insurer refused to pay and the shipowner filed a suit against it to the District Court of the Southern District of New York. Defendant waived the summons and did not appear before the court. A default judgment for recovery of loss and case related expenses was rendered against the defendant. As the Russian insurer had no assets in the United States, the foreign shipowner sought enforcement of the judgment in Russia.

The principal argument on behalf of the US shipowners was that Article 15 of the Constitution of the Russian Federation provides that the commonly recognized principles and norms of the international law form a part of Russia's legal system. *Comity (comitas gentium)* and reciprocity are recognized principles of international law. The said principles are not specifically codified in the Russian procedural law, but because they are indeed customary and recognized principles of international law, the Russian courts are required to follow them.

The principle of reciprocity is codified in Russian substantial law, in the Civil Code (chapter on international private law). Article 1189 stipulates that reciprocity shall be deemed to exist unless the contrary is proven. This is an important provision, for parties seeking enforcement of foreign judgments. The suggested interpretation is that it is the defendant's burden to prove the absence of reciprocity in issues of enforcement between the United States and Russia.

Article 244 of the Commercial Procedure Code provides for a comprehensive list of grounds for refusing recognition and enforcement of foreign judgments. This list includes: (1) non-entry of the foreign judgment into force, (2) undue summoning of the defendant and his inability to present his position, (3) the dispute in question being in the exclusive jurisdiction of the Russian courts, (4) existence of a judgment of the Russian court in the same dispute or the same dispute being under consideration at the of a Russian court, provided that Russian proceedings commenced earlier, (5) recognition having become time barred (3 years), and (6) enforcement of the particular foreign judgment being in violation to the public policy in the Russian Federation. Absence of an international treaty is not on the list of grounds for recognition. On the basis of this argument, the court was less formal in the interpretation of article 241, which provides for recognition and enforcement in case of existence of a relevant international treaty. The defendant was required to provide evidence that it is impossible to enforce Russian judgments in the US as the country of origin of the judgment. As the defendant failed to do so, the Court ruled to recognize and enforce the judgment of the Southern District Court of New York.

Even though the amount of the judgment in the case at hand was relatively small, around USD 560,000, the importance of its recognition in Russia should not be underestimated. The enforcement of the judgment in itself lays the foundations of practice of reciprocity between the courts of Russia and the US; it also marks a certain change of attitude to foreign judgments from the side of the Russian court system and finally, it encourages those who may be seeking to enforce foreign judgments in Russia but have been prevented from it by the absence of the bilateral treaty which directly provides for such possibility.

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