

PROCEEDING ON CASES WITH PARTICIPATION
OF FOREIGN PERSONS IN INTERNATIONAL PROCEDURE LAW
OF RUSSIA, KAZAKHSTAN AND UZBEKISTAN
(The end)¹

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Abstract. This article is dedicated to one of the most interesting aspects of International Procedure Law – litigation with the participation of foreign persons. Authors focused on a comparative analysis of Russian, Kazakh and Uzbek legislation concerning the regulation of international procedural relations. Article includes two paragraphs: the first one considers international jurisdiction of Russian arbitrazh courts, Kazakh economic courts and Uzbek economic courts on commercial matters; the second one examines the recognition and enforcement of foreign court decisions in commercial matters on the territory of Russia, Kazakhstan and Uzbekistan. Authors deeply scrutinized a wide range of legal documents including domestic legislation and multilateral international treaties of regional character in order to show the convergences and divergences in Russian, Kazakh and Uzbek procedural law concerning participation of foreign persons in international commercial litigation.

Key words: International Procedure Law, International Civil Procedure, International Jurisdiction, Foreign Persons, International Commercial Litigation.

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Recognition and Enforcement of Foreign
Judicial Decisions on the Territory of Russia,
Kazakhstan and Uzbekistan

Whether a judicial decision will be recognized and enforced is a vital consideration in structuring contractual relations, for if that is impossible or unlikely, foreign economic and investment transactions are likely to involve additional costs reflecting the legal risks or to be avoided completely. A judicial decision, being an act of the public authority of one State must be recognized and enforced on the territory of another State to which the public authority of the first State does not extend. By virtue of generally recognized principles of international law, namely territorial integrity and the sovereign equality of States, the recognition and enforcement of a foreign judicial decision is possible only on the basis of

respective norms of national legislation or an international treaty². Both are possibilities under the law of the Russian Federation, Kazakhstan, and Uzbekistan but with certain peculiarities³.

² See: Kostin A.A. International Treaty as a Legal Ground for Recognition and Enforcement of Foreign Judicial Decisions: Past, Present, Future // Law. 2018. No. 8. P. 162–176.

³ For details, see: Boiko K.S. Recognition and Enforcement of Foreign Judicial Decisions in Russia: Realities and Prospects // Law and Education. 2018. No. 12. P. 205–213; Vanisova A.O. Legal Regulation of Recognition and Enforcement of Foreign Judicial Decisions in the Russian Federation // Actual Problems of the Economy, Management, and Law: Collection Scientific Works. 2018. No. 2–3. P. 87–166; Vojtovich E.P. Recognition and Enforcement of Foreign Court Decisions in Russia: Conflicts of Law Enforcement // Russian Legal Journal. 2019. No. 2. P. 126–134; Moleva G.V. and Laptev I.S. Recognition and Enforcement of Foreign Judicial Decisions as Mean of Raising the Effectiveness of Justice // Legal Policy and Legal Life. 2015. No. 3. P. 150–152; Tur I.A. and Sevastianova V.N. Recognition and Enforcement of Foreign Judicial

¹ Beginning see: Gosudarstvo i pravo=State and Law, No. 4, pp.

The norms of Russian legislation on the recognition and enforcement of foreign judicial decisions are contained in Chapter 31 of the Code of Arbitrazh Procedure of the Russian Federation. According to Article 241 of the said Code, the decisions of foreign courts adopted with regard to disputes and other cases arising when undertaking entrepreneurial and other economic activity are recognized and enforced in the Russian Federation by arbitrazh courts if the recognition and enforcement of such decisions is provided for by international treaties of the Russian Federation and a federal law⁴. The norms of Kazakh legislation regulating the recognition and enforcement of foreign judicial decisions are set out in the Code of Civil Procedure of the Republic Kazakhstan (Article 501). They provide that decisions, decrees, and rulings concerning the confirmation of amicable agreements and judicial orders of foreign courts are recognized and enforced by courts of the Republic Kazakhstan if recognition and enforcement has been provided by Kazakhstan legislation and/or an international treaty ratified by the Republic Kazakhstan, or on the basis of reciprocity⁵. The provisions of Uzbek legislation relating to the recognition and enforcement of foreign judicial decisions are found in the Code of Economic Procedure of the Republic Uzbekistan (Article 248). Such decisions are recognized and

enforced if so provided by legislation or an international treaty of Uzbekistan.

Reciprocity. It is, however, difficult to conclude that in the Russian Code of Arbitrazh Procedure the principle of reciprocity is an autonomous ground for the recognition and enforcement of foreign judicial decisions. The possibility of the recognition and enforcement of a foreign judicial decision on the basis of a federal law means that a new ground for such recognition and enforcement must be consolidated in separate federal laws⁶. However, the only example mentioned is the Federal Law of 26 October 2002 “On Insolvency (or Bankruptcy)”, as amended⁷, where Article 1(6) provides: Decisions of courts of foreign States with regard to cases concerning insolvency (or bankruptcy) shall be recognized on the territory of the Russian Federation in accordance with international treaties of the Russian Federation. In the absence of international treaties of the Russian Federation decisions of courts of foreign States with regard to cases concerning insolvency (or bankruptcy) shall be recognized on the territory of the Russian Federation on the principle of reciprocity unless provided otherwise by a federal law. This provision of the bankruptcy legislation refers only to “recognition” of a foreign judicial decision, and not to enforcement. Moreover, the principle of reciprocity is applied only to a narrow group of foreign judicial decisions rendered in cases of insolvency or bankruptcy.

The Code of Civil Procedure of Kazakhstan singled out reciprocity as an autonomous ground for the recognition and enforcement of foreign court decisions on the territory of the Republic Kazakhstan. The procedural law of Uzbekistan does not provide that reciprocity is a ground for recognition and enforcement, indicating merely that an international treaty and legislation serve as grounds for recognition and enforcement of a foreign judicial decision.

The procedure for the recognition and enforcement of a foreign judicial decision in Russia is as follows. An application for recognition and enforcement of the decision of a foreign court is filed by the party to whose

Decisions in the Russian Federation: Problems of Applying Individual Provisions of International Treaties // Law. 2014. No. 8. P. 70–72; *Fedorov R.V.* Theoretical Analysis of Legal Grounds of Recognition and Enforcement of Foreign Judicial Decisions in the Russian Federation // Herald of the Catherinian Institute. 2017. No. 2. P. 129–133; *Shebanova N.A.* Recognition and Enforcement of Foreign Judicial Decisions in the Practice of Russian Courts (in Engl.) // Proceedings of the ISL of the RAS. 2017. No. 1. P. 22–43; *Silberman L. and Ferrari F.* (eds.). Recognition and Enforcement of Foreign Judgments (2017). Deserving of special attention is the fact that in the nineteenth century special works appeared in Imperial Russia on this issue. See, for example: *Markov P.* On Enforcing Judicial Decisions of Foreign States // Journal of the Ministry of Justice. 1864. XXII. P. 25–46, 211–224; *Engel'man I.E.* On the Enforcement of Foreign Judicial Decisions in Russia // Journal of Civil and Criminal Law. 1884. No. 1. P. 75–121.

⁴ The Ural Regional Court in a ruling of 09 July 2018 Re: case No. F09–2438/18 (A50–37421/2017), explained the following: from the literal content of the rule of article 241(1) of the Russian Code of Arbitrazh Procedure follows that recognition and enforcement are applied to the decisions of the courts of foreign States rendered by them in substance. The provisions of the Russian Code of Arbitrazh Procedure do not provide for the possibility of enforcement, except decisions, other acts of courts of foreign States taken before or after the resolution of dispute in substance. The norms of the Russian Code of Arbitrazh Procedure apply only to final decisions rendered as a result of the dispute resolution on the concrete subject and the concrete grounds under the analysis of the entire set of evidence in the full procedure. Rulings of foreign courts on application of interim measures (both preliminary and injunctions) are not subject to recognition and enforcement in Russia, because they are not final judicial acts on the substance of the dispute rendered in competitive processes. Available on “ConsultantPlus”.

⁵ See: *Makasheva K.* Recognition and Enforcement of Foreign Court Decisions in Russia and Kazakhstan: A Comparative Legal Analysis // Law and Economics. 2019. No. 8. P. 75–79.

⁶ See: *Alekseeva A.S.* Recognition and Enforcement of Foreign Court Decisions. Implementation of International Principles of Reciprocity and Comity // Herald of Execution Proceedings. 2019. No. 3. P. 71–77; *Vlasova N.V.* Reciprocity as Ground for the Recognition and Enforcement of Foreign Judicial Decisions in Russia // Actual Problems of Russian Law. 2016. No. 10; *Gintov D.V.* Private Law: Principle of Reciprocity as Ground for the Recognition and Enforcement of Decisions of Foreign Courts // Business in Law: Economic-Legal Journal. 2014. No. 6; *Litvinskii D.V.* “Never Refuse Enforcement”: Once More on the Question of Enforcing Decisions of Foreign Courts on the Territory of the Russian Federation in the Absence of an International Treaty // Herald of the Supreme Arbitrazh Court of the Russian Federation. 2006. No. 4–5; *Malysheva V.G.* Recognition and Enforcement of Foreign Judicial Decisions on the Basis of Reciprocity: Approaches of Judicial Practice // Financial Economy. 2018. No. 6.

⁷ See: No. 43 (2002), item 4190. As of 02.12.2019.

benefit the decision was adopted (hereinafter: recoverer) at the arbitrazh court of a subject of the Russian Federation at the location or place of residence of the debtor or, if the location or place of residence or location is unknown, at the location of property of the debtor. The application is filed in written form and must be signed by the recoverer or the representative thereof. The said application also may be filed by filling out the form placed on the official Internet site of the arbitrazh court (Article 242, Code of Arbitrazh Procedure).

To the application or petition for recognition and enforcement of the decision of a foreign court are attached: duly certified copy of the decision of the foreign court whose recognition and enforcement is being sought; duly certified document confirming the entry of the foreign court decision into legal force if this is not indicated in the text of the decision itself; document duly certified confirming that the debtor was notified in a timely manner and in the proper form about the examination of the case in the foreign court whose recognition and enforcement is being sought; power of attorney or other document duly certified and confirming the powers of the person who signed the application for recognition and enforcement in the arbitrazh court; and a document confirming the sending to the debtor of the copy of the application for recognition and enforcement of the decision of the foreign court; and a certified translation of the said documents into the Russian language (Article 242(3), Code of Arbitrazh Procedure).

The application for recognition and enforcement of a foreign court decision is considered by a judge alone according to the rules for the consideration of a case by an arbitrazh court of first instance within a period not exceeding one month from the day of receipt thereof in the arbitrazh court of a subject of the Russian Federation. The arbitrazh court notifies the persons participating in the case about the time and place of the judicial session. The failure of the said persons to appear duly notified about the time and place of the judicial session is not an obstacle to consideration of the case.

Consideration of Recognition and Enforcement. When considering a case, an arbitrazh court establishes in judicial session the presence or absence of grounds to recognize and enforce a foreign court decision as provided by Article 244 of the Code of Arbitrazh Procedure by investigating the evidence submitted to the arbitrazh court, the grounds of the demands and objections, and also the explanations of the foreign court which adopted the decision if the arbitrazh court demands and obtains such explanations. When considering the case, the arbitrazh court does not have the right to review the foreign court decision in substance (Article 243, Code of Arbitrazh Procedure).

The arbitrazh court renders a ruling with regard to the results of consideration of the application concerning recognition and enforcement of the decision of the foreign court according to the rules provided in Chapter 20

of the Code of Arbitrazh Procedure for the adoption of a decision. The ruling of the arbitrazh court may be appealed by way of cassation to the arbitrazh court of a district within one month from the day of rendering the ruling (Article 245, Code of Arbitrazh Procedure). The decision of the foreign court is enforced on the basis of a writ of execution issued by the arbitrazh court of the Russian Federation which rendered the ruling to recognize and enforce it in the procedure provided by the Code of Arbitrazh Procedure and the Federal Law of 2 October 2007 "On an Execution Proceeding", as amended⁸ (Article 246, Code of Arbitrazh Procedure)⁹. The foreign court decision may be filed for enforcement within a period not exceeding three years from the day of entry into legal force. If the said period lapses, it may be renewed by an arbitrazh court upon the petition of the recoverer (Article 246, Code of Arbitrazh Procedure).

Refusal to Recognize or Enforce. A refusal to recognize and enforce a foreign judicial decision is permitted in the following instances, the list being exhaustive in Russian legislation¹⁰:

- (1) the decision according to the law of the State on whose territory it was rendered has not entered into legal force;
- (2) the party against whom the decision was rendered was not notified in a timely manner and duly about the time and place of consideration of the case or for other reason could not submit his explanations to the court¹¹;
- (3) the consideration of the case in accordance with an international treaty of the Russian Federation or federal law is relegated to the exclusive jurisdiction of an arbitrazh court in the Russian Federation;
- (4) there is a decision of a court in the Russian Federation which has entered into legal force rendered with regard to the dispute between the same persons, on the same subject-matter, and on the same grounds;

⁸ See: no. 41 (2007), item 4849. As of 02.12.2019.

⁹ Translated in: *Butler W.E.* Russian Public Law. 3d ed. London, 2013. P. 456–526.

¹⁰ See: *Zakirova I.I.* On Certain Grounds for Refusal to Recognize and Enforce Acts of Foreign Courts in the Russian Federation // *Arbitrazh and Civil Procedure*. 2017. No. 11. The Arbitrazh Court of the Urals District in a Decree of 28 January 2019, No. Ф09-7920/18 re: А50–25299/2018 specially emphasized that Article 244(1) of the Code of Arbitrazh Procedure of the Russian Federation contains an exhaustive list of grounds for refusal to recognize and enforce a decision of a foreign court on the territory of Russia. Available on "ConsultantPlus". Also see: *Vinter E.V.* Grounds for Refusal to Recognize and Enforce Decisions of Foreign Courts // *Moscow Journal of International Law*. 2006. No. 4.

¹¹ See: *Kostin A.A.* Due and Timely Notification of the Defendant as Condition of Recognition and Enforcement of Decision of Foreign Court (Analysis of Article 244(1) of the Code of Arbitrazh Procedure of the Russian Federation and Article 412(1) of the Code of Civil Procedure of the Russian Federation) // *Law*. 2017. No. 4.

(5) a case is under consideration of a court in the Russian Federation with regard to a dispute between the same persons, concerning the same subject-matter, and on the same grounds, the proceedings regarding which were instituted before institution the proceedings regarding the case in a foreign court, or the court in the Russian Federation first accepted for proceedings the application regarding the dispute between the same persons, the same subject-matter, and on the same grounds;

(6) the period of limitation expired for bringing the decision of the foreign court for enforcement and this period is not reinstated by an arbitrazh court;

(7) the enforcement of the decision of the foreign court would be contrary to public policy of the Russian Federation (Article 244, Code of Arbitrazh Procedure)¹².

Public Policy. With regard to public policy, the Presidium of the Supreme Arbitrazh Court of the Russian Federation issued Information Letter No. 156 on 26 February 2013 (hereinafter: Information Letter No. 156). One important virtue of the Information Letter was the formulation of a concept of “public policy”, understood as the “fundamental legal principles which possess the highest imperativeness, universality, and special social and public significance, and comprise the basis of the structure of the economic, political, and legal system of the State”. Among such principles is prohibition to perform actions expressly prohibited by super-imperative norms of the legislation of Russia (Article 1192, Civil Code) if these actions prejudice the sovereignty or security of the State, affect the interests of large social groups, or violate the constitutional rights and freedoms of private persons.

An arbitrazh court refuses to recognize and enforce foreign judicial decision also on its own initiative, not only upon the petition of the defendant as an interested party. The party in declaring that recognition and enforcement of a foreign judicial decision would be contrary to the public policy of Russia must substantiate the existence of such a contradiction. In turn, the evaluation by the arbitrazh court of the consequences of enforcing a foreign judicial decision on the subject-matter of a violation of the public policy of Russia should not lead to a review of the foreign judicial decision in substance (points 1–3, Information Letter No. 156)¹³.

¹² See: *Demirchian V.V.* Some Peculiarities of Application of the Public Policy Clause by Russian Courts // *Humanities, Socio-Economic, and Social Sciences*. 2017. No. 10. P. 106–109; *Zabirova R.I. and Berdegulova L.A.* Public Policy Clause in Private International Law // *Economy and Socium*. 2017. No. 3. P. 1636–1638; *Osipov A.O.* On Delimitation of the Public Policy Clause and Similar Grounds for Refusal to Issue an Exequatur for Decisions of Foreign Courts in an Arbitrazh Proceeding // *Arbitrazh and Civil Procedure*. 2017. No. 10. P. 33–37; *Salomov I.I.* Correlation of Public Policy Clause and Other Categories Limiting the Application of Norms of Foreign Law // *Legal Life*. 2017. No. 3. P. 99–111.

¹³ See: *Kurochkin S.A.* Commentary on the Survey of the Practice of Consideration by Arbitrazh Courts of Cases Concerning the

Procedural practice relating to cases concerning the recognition and enforcement of foreign judicial decisions was generalized in Information Letter No. 96 of 22 December 2005 issued by the Supreme Arbitrazh Court of the Russian Federation. The most important conclusions set out in this Information Letter were as follows¹⁴:

(1) the arbitrazh court when considering an application to recognize and enforce the decision of a foreign court does not have the right to review the decision of the foreign court in substance or essence (point 4);

(2) the arbitrazh court when considering the question of notifying the party against which the decision was adopted verifies whether the party was deprived of the possibility of defense in connection with the absence of actual and timely notification about the time and place of consideration of the case (point 6);

(3) the arbitrazh court renders a ruling to recognize and enforce the decision of a foreign court provided that this decision has entered into legal force in accordance with legislation of the State on whose territory it was adopted (point 7);

(4) the arbitrazh court has the right to refuse to recognize and enforce a foreign judicial decision if it establishes that this decision was rendered with regard to a dispute relegated to the exclusive competence of arbitrazh courts in the Russian Federation (point 8);

(5) the arbitrazh court renders a ruling to satisfy the application to enforce the decision of a foreign court if the means for enforcing the decision provided in the resolute part is not contrary to the public policy of the Russian Federation (point 31).

Foreign Judicial Decisions Not Requiring Enforcement.

An innovation in Russian procedural law is the provision that foreign judicial decisions not requiring enforcement may be recognized. According to Article 245¹ of the Code of Arbitrazh Procedure, decisions of foreign courts not requiring enforcement are recognized in the Russian Federation if their recognition is provided for by an international treaty of the Russian Federation or by a federal law¹⁵. Such decisions are recognized in

Application of Public Policy as a Ground for Refusal to Recognize and Enforce Foreign Judicial and Arbitration Decisions // *Herald of Federal Arbitrazh Court of the Urals District*. 2013. No. 3. P. 32–51.

¹⁴ See: “Survey of Practice of Consideration by Arbitrazh Courts of Cases Concerning the Recognition and Enforcement of Decisions of Foreign Courts, Contesting Awards of Arbitration Courts, and Issuance of Writs of Execution for Awards of Arbitration Courts”. Information Letter No. 96. Available on “ConsultantPlus”.

¹⁵ See: *Kostin A.A.* On the Question of Recognition of Foreign Judicial Decisions Relating to Economic Disputes Not Requiring Enforcement (Scientific-Practical Commentary to Article 245¹, the Code of Arbitrazh Procedure of the Russian Federation // *Journal of Russian Law*. 2017. No. 5. P. 119–128; *Kostin A.A.* Recognition and Enforcement of Foreign Judicial Decisions (History of Question and Contemporary Prospects) // *Herald of Civil Procedure*. 2018. No. 5. P. 245–268.

the Russian Federation without any further proceedings if there are not objections on the part of an interested person. The interested person within one month after the decision of the foreign court became known to him may declare objections relating to recognition of this decision in an arbitrazh court of a subject of the Russian Federation at the location or place of residence of the interested person or the location of the property thereof, and if the interested person has not a place of residence, location, or property in the Russian Federation, at the Arbitrazh Court of the City of Moscow. The application of an interested person concerning objections against a foreign judicial decision is filed in written form and must be signed by the interested person or representative thereof (hereinafter: application). The said application may be filed by filling out the form placed on the official Internet site of the arbitrazh court.

The application is considered within a period not exceeding one month from the day of receipt thereof in the arbitrazh court. When considering the application, the arbitrazh court has the right to enlist to participate in the case persons with respect to whose rights and duties the decision of the foreign court was rendered, with prolongation of the period for consideration of this application. The failure of the said persons to appear duly notified about the time and place of the judicial session, and also of an interested person, does not prevent consideration of the case. The arbitrazh court will refuse to recognize the decision of the foreign court on the grounds set out above and provided by Article 244 of the Code of Arbitrazh Procedure. The ruling of the arbitrazh court in a case concerning recognition of the decision of a foreign court not requiring enforcement may be appealed by way of cassation to the arbitrazh court of a district within one month from the day of rendering the ruling (Article 245¹, Code of Arbitrazh Procedure).

Unless established otherwise by an international treaty ratified in Kazakhstan, the conditions and procedure for the recognition and enforcement of foreign court decisions are determined by a law. Decisions of foreign courts are understood to be decisions, decrees, and rulings concerning the confirmation of an amicable agreement or judicial orders of foreign courts (Article 501(1), Code of Civil Procedure). Foreign judicial decisions may be filed for enforcement within three years from the moment of their entry into legal force (Article 501(3), Code of Civil Procedure).

If a foreign court decision was not executed voluntarily within the period established therein, the party to the judicial examination to whose benefit the decision was rendered has the right to apply for enforcement at the place of residence of the debtor or the location of the organ of the juridical person, and if the place of residence or location is unknown, at the location of property of the debtor. To the application for the issuance of a writ of execution are appended a duly attested

original decision of the foreign court or duly attested copy thereof. If the said decision of the foreign court was set out in a foreign language, the party should submit a duly attested translation thereof into the Kazakh or Russian language. Applications for the issuance of a writ of execution may be filed no later than three years from the end of the period for voluntary execution of the foreign court decision (Article 503, Code of Civil Procedure).

An application for the issuance of a writ of execution which was filed with a lapse of the established period or to which the necessary documents were not appended is returned by the court without consideration, concerning which a ruling is rendered that may be appealed or may be protested in the procedure established by the Code of Civil Procedure. The court has the right to renew the period for filing the application for issuance of a writ of execution if it finds the reasons for the lapse of the said period to be important. The application concerning the issuance of a writ of execution is considered by a judge sitting alone within fifteen working days from the day of receipt of the application at the court. The court informs the debtor about the application of the recoverer received for enforcement of the foreign court decision, and also the time and place of consideration thereof in judicial session. The recoverer also is informed about the place and time of consideration of his application. The failure of the debtor or recoverer to appear at the judicial session is not an obstacle to consideration of the application if a petition is not received from the debtor to postpone consideration of the application, indicating the important reasons for the impossibility to appear at the judicial session.

The court when considering the applications to issue a writ of execution for enforcement of a foreign judicial decision does not have the right to review that decision in substance. A ruling is issued by the court with regard to the results of consideration of the application for the issuance of a writ of execution or a refusal to issue such. The ruling of the court to issue a writ of execution is subject to immediate execution (Article 503(4)-(9), Code of Civil Procedure). The procedural legislation of Kazakhstan does not provide autonomous grounds for a refusal to enforce a foreign judicial decision, but merely speaks (Article 504, Code of Civil Procedure) about a refusal to issue a writ of execution in accordance with the rules provided by Chapter 20 of the Code of Civil Procedure, and likewise a writ of execution is issued in accordance with the same Chapter 20. According to Article 255 of the Code of Civil Procedure, a court renders a ruling to refuse to issue a writ of execution of a foreign court decision if:

(1) the party against which the decision was adopted submits to the court evidence that:

(a) the party against which the decision was rendered was not duly informed about the judicial examination or

for other reasons deemed by the court to be important, could not submit his explanations to the court;

(b) there is a decision of a court which has entered into legal force rendered with regard to a dispute between the same parties, the same subject-matter, and on the same grounds or a ruling of a court concerning termination of the proceedings in the case in connection with the plaintiff withdrawing the suit;

(c) the rendering of a judicial decision became possible as a result of the commission of a criminal violation established by the judgment of a court which entered into legal force;

(d) the composition of the court or judicial procedure in the examination of the case did not correspond to the requirements of law;

(e) the decision has not yet become binding on the parties or was reversed, or the execution thereof was suspended by the court of the country in accordance with whose law it was rendered;

(2) the court establishes that enforcement of this judicial decision would be contrary to the public policy of the Republic Kazakhstan.

Foreign Court Decisions Not Requiring Recognition. In Kazakhstan the following decisions of foreign courts do not require execution by virtue of their character:

(1) those affecting the personal status solely of citizens of the State whose court rendered the decision;

(2) those concerning the dissolution or deeming invalid of marriages between citizens of the Republic Kazakhstan and foreigners if at the moment of the decision one of the spouses resided beyond the borders of Kazakhstan;

(3) those concerning the dissolution or deeming invalid of marriages between citizens of the Republic Kazakhstan if both spouses at the moment of dissolution of the marriage resided beyond the borders of the Republic Kazakhstan (Article 502, Code of Civil Procedure).

As follows from the above, decisions of foreign courts with regard to international commercial disputes are subject to enforcement; their recognition alone would be insufficient. The Kazakh economic court conducts not a judicial examination to authorize enforcement, but renders a ruling to issue, or refuse to issue, a writ of execution for enforcement of a foreign judicial decision.

Whether to recognize and enforce the decision of a foreign court or award of an arbitration tribunal is decided in Uzbekistan by an economic court upon the application of the party to the dispute to whose benefit the decision or award was rendered. The decision of the foreign court or award of an arbitration tribunal may be filed for recognition and enforcement within three years from the moment of entry the decision or award into

legal force unless provided otherwise by an international treaty of Uzbekistan. The application for recognition and enforcement is filed at the economic court of the Republic Karakalpakstan, region, or City of Tashkent at the location or place of residence of the debtor or, if the location or place of residence of the debtor is unknown – at the place of State registration of the debtor. When considering the case, the economic court of the Republic Uzbekistan does not have the right to review the decision of the foreign court or award of the arbitral tribunal in substance.

With regard to the results of the consideration of the application to recognize and enforce the foreign court decision or award of the arbitral tribunal, the economic court of Uzbekistan renders a ruling according to the rules established in Chapter 22 of the Code of Economic Procedure, “Ruling and Decree of Court”. The ruling rendered with regard to the results of consideration of the case to recognize and enforce the foreign court decision or award of an arbitral tribunal may be appealed or protested within the periods and in the procedure established by the Code of Economic Procedure. The foreign court decision or arbitral award is enforced on the basis of a writ of execution issued by the court which rendered the ruling to recognize and enforce the foreign court decision or arbitral award in the procedure provided by Uzbek legislation. To the application to recognize and enforce the decision of the court of a foreign State or arbitral tribunal must be appended the documents provided by Article 251 of the Code of Economic Procedure, in particular:

(1) the decision or award of the foreign court or arbitration tribunal whose recognition and enforcement is being requested, or a copy thereof duly attested by a competent agency of the foreign State or of the Republic Uzbekistan;

(2) the official document that the decision or award has entered into legal force unless this arises from the text of the decision or award itself;

(3) the document concerning partial enforcement of the decision or award if it was previously enforced on the territory of the respective foreign State;

(4) the document from which it follows that the party against which the decision or award was rendered and did not take part in the judicial proceeding was duly notified in a timely manner about the time and place of consideration of the case;

(5) the power of attorney or other document certifying the powers of the representative;

(6) the document confirming the sending to the defendant of a copy of the application for recognition and enforcement of the foreign court decision;

(7) the documents confirming payment of State duty and postal expenses in the established procedure and

the amount, unless provided otherwise by an international treaty of the Republic Uzbekistan;

(8) the translation attested in the established procedure of the documents specified in points (1)–(5) above into the State language, unless provided otherwise by an international treaty of the Republic Uzbekistan.

An application filed not in compliance with the said requirements is subject to return according to Article 253 of the Code of Economic Procedure. A refusal to satisfy the application to recognize and enforce the decision of a foreign court or award of an arbitral tribunal is possible when the grounds provided by the Code of Economic Procedure are present (Articles 255 and 256):

(1) the decision or award according to the law of the State on whose territory it was adopted has not entered into legal force, except for instances when the decision or award is subject to execution before entry into legal force;

(2) the party against whom the decision or award was adopted was not duly notified in a timely manner about the time and place of consideration of the case or for other reasons could not submit his explanations to the court;

(3) the consideration of the case in accordance with an international treaty or legislation of Uzbekistan is relegated to the exclusive jurisdiction of a court of the Republic Uzbekistan;

(4) there is a decision which has entered into legal force of a court of the Republic Uzbekistan adopted with regard to a dispute between the same persons, on the same subject-matter, and on the same grounds;

(5) the case is under consideration of a court of the Republic Uzbekistan with regard to a dispute between the same persons, on the same subject-matter, and on the same grounds, the proceedings with regard to which were initiated before the initiation of proceedings with regard to the case in the foreign court;

(6) the limitation period has expired for bringing the decision of a foreign court for enforcement and this period has not been restored by a court;

(7) evidence has been submitted by a party that the dispute was settled by a foreign court not having jurisdiction;

(8) the decision was reversed by a competent agency of a foreign State;

(9) the decision was rendered by a court of a foreign State which is not a party to international treaties of the Republic Uzbekistan connected with the recognition and enforcement of decisions of foreign courts;

(10) enforcement of the decision of a foreign court would prejudice the sovereignty, security, or be contrary to the basic principles of legislation of the Republic Uzbekistan.

Bilateral Legal Assistance Treaty. Reference was made above to the Almaty Treaty. Section III of the said Treaty, “Recognition and Enforcement of Decisions”, provides (Article 52) that each of the Contracting Parties recognizes and enforces decisions which have entered into legal force and rendered on the territory of the other Contracting Party, these being understood decisions of justice institutions for civil and family cases, including amicable agreements confirmed by the court with regard to such cases and notarial acts with respect to monetary obligations (hereinafter: decisions). Decisions rendered by justice institutions of each Contracting Party and which have entered into legal force and not requiring enforcement by reason of their character are recognized on the territory of the other Contracting Party without a special proceeding, provided that:

(1) justice institutions of the requested Contracting Party did not render decisions previously with regard to this case which have entered into legal force;

(2) the case under the Almaty Treaty and in instances not provided by it, according to legislation of the Contracting Party on whose territory the decision should be recognized is not relegated to the exclusive jurisdiction of the justice institution of this Contracting Party (Article 53(1), Almaty Treaty).

The petition to authorize enforcement of the decision is filed at the competent court of the Contracting Party where the decision is subject to enforcement. It may be filed also at the court which rendered the decision in the case at first instance. This court sends the petition to the court competent to render a decision on the petition. There is appended to the petition:

(1) the decision or attested copy thereof, and also an official document that the decision has entered into legal force and is subject to enforcement or that it is subject to enforcement before entry into legal force if this does not follow from the decision itself;

(2) the document from which it follows that the party against which the decision was rendered and not taking part in the proceedings was duly summoned to court in the proper procedure and in a timely manner, and in the event of the lack of dispositive procedural legal capacity thereof, was properly represented;

(3) the document confirming the partial enforcement of the decision at the moment of sending thereof;

(4) the document confirming the agreement of the parties in cases of contractual jurisdiction.

A petition to authorize enforcement of a decision and the documents appended thereto are supplied with an attested translation into the language of the requested Contracting Party or into the Russian language (Article 54, Treaty of Almaty). Petitions to recognize and authorize enforcement of decisions are considered by courts of the Contracting Parties on whose territory the

enforcement should be undertaken. The court considering a petition to recognize and authorize enforcement of a decision is confined to establishing that the conditions provided by the Almaty Treaty have been complied with. If these conditions have been complied with, the court renders a decision for enforcement. The procedure for enforcement is determined by the legislation of the Contracting Party on whose territory the enforcement is to be undertaken (Article 55, Almaty Treaty).

The recognition of judicial decisions and the issuance of authorization to enforce them may be refused if:

(1) in accordance with legislation of the Contracting Party on whose territory the decision was rendered it has not entered into legal force or is not subject to enforcement, except when the decision is subject to enforcement before entry into legal force;

(2) the defendant did not take part in the proceedings, as a consequence of which he or his representative was not duly and timely handed the summons to court;

(3) a decision with regard to a case between the same parties, on the same subject-matter, and on the same grounds on the territory of the Contracting Party where the decision should be recognized and enforced was already previously rendered and entered into legal force, or there is a recognized decision of a court of a third State, or if an institution of this Contracting Party previously instituted proceedings with regard to the particular case;

(4) according to the Almaty Treaty, and in instances not provided by it, according to the legislation of the Contracting Party on whose territory the decision should be recognized and enforced, the case is relegated to the exclusive jurisdiction of its institutions;

(5) the document confirming agreement of the parties with regard to a case of contractual jurisdiction is absent;

(6) the limitation period for enforcement provided by legislation of the Contracting Party whose court considers the petition for recognition and enforcement of the decision has expired (Article 56, Almaty Treaty).

The procedure for the recognition and enforcement of foreign judicial decisions is set out in multilateral and bilateral international treaties in addition to the procedural legislation of the countries concerned. The Minsk Convention, for example, contains Section III, "Recognition and Enforcement of Decisions"¹⁶, and there are analogous provisions in the Kiev Agreement. At present, multilateral agreements in the sphere of civil procedure continue to operate within the Eurasian Economic Union, including those concluded within the Commonwealth of Independent States. So far no trend is in

evidence to simplify proceedings for the recognition and enforcement of foreign court decisions or to move to an "open" model, which one might expect against the background of Eurasian integration¹⁷.

Minsk Convention. The term "decision" in international civil procedure the Minsk Convention understands to be the decision of "justice institutions" in civil and family cases, including amicable agreements confirmed by a court in such cases and notarial acts with respect to monetary obligations (hereinafter: decisions). Decisions rendered by justice institutions of each of the Contracting States and which have entered into legal force and by their nature not requiring enforcement are recognized on the territories of other Contracting States without a special proceeding provided that:

(1) justice institutions of the requested Contracting State have not previously rendered a decision with regard to this case which has entered into legal force;

(2) the case according to the Minsk Convention, or in instances not provided by it but according to the legislation of the Contracting State on whose territory the decision should be recognized, is not relegated to the exclusive jurisdiction of the justice institutions of that Contracting State (Article 52, Minsk Convention).

A petition to authorize enforcement of a foreign judicial decision is filed in a competent court of the Contracting State where the decision should be enforced. It may also be filed in a court which rendered the decision at first instance in the case. This court sends the petition to a court competent to render the decision with regard to the petition. There must be appended to the petition:

(a) the decision or attested copy thereof, and also an official document concerning the fact that the decision has entered into legal force and is subject to enforcement, or that it is subject to enforcement before entry into legal force if this does not follow from the decision itself;

(b) a document from which it follows that the party against which the decision was rendered and did not take part in the proceedings was duly and timely summoned to court, and in the event of lacking procedural dispositive legal capacity, was duly represented;

(c) the document confirming partial enforcement of the decision at the moment of sending thereof;

(d) the document confirming agreement of the parties in cases of contractual jurisdiction.

A petition to authorize enforcement of a foreign judicial decision and the appended documents must be accompanied by an attested translation into the language

¹⁶ See: *Egorov A.A.* Recognition and Enforcement of Judicial Decisions of Countries Party to the Minsk Convention of the Commonwealth of Independent States // *Legislation and Economy*. 1998. No. 12. P. 37, 38.

¹⁷ See: *Branovitskii K.L. and Alenkina N.B.* Legal Regime of the Recognition and Enforcement of Foreign Judicial Decisions in the Eurasian Economic Union // *Herald of Civil Procedure*. 2018. No. 6. P. 168–192; *Trubacheva A.V.* Peculiarities of the Recognition and Enforcement of Foreign Court Decisions in the EAEU // *Issues of Russian and International Law*. 2019. No. 9:9–1. P. 44–50.

of the requested Contracting State or into the Russian language (Article 53, Minsk Convention). Petitions concerning the recognition and authorization for enforcement are considered by courts of the Contracting State on whose territory the enforcement is to be undertaken. The court considering the petition to recognize and authorize enforcement of a foreign judicial decision is limited to establishing that the conditions provided by the Minsk Convention have been complied with. If the conditions have been complied with, the court renders a decision to enforce¹⁸.

The procedure for enforcement is determined by the legislation of the Contracting State on whose territory enforcement should be undertaken (Article 54, Minsk Convention). Refusal to recognize or authorize the enforcement of a foreign judicial decision may occur if:

(a) in accordance with legislation of the Contracting State on whose territory the foreign judicial decision was rendered, it has not entered into legal force and is not subject to enforcement, except for instances when the decision is subject to enforcement before entry into legal force;

(b) the defendant did not take part in the proceedings because he or an empowered person was not duly and timely summoned to court¹⁹;

(c) with regard to a case between the same parties, on the same subject-matter, and on the same grounds on the territory of the Contracting State where the decision should be recognized and enforced, a decision already rendered which has entered into legal force or has

been recognized by a judicial decision of a third State, or if proceedings with regard to the case were previously instituted by an institution of this Contracting State;

(d) according to the Minsk Convention and also in instances not provided by it, according to legislation of the Contracting State on whose territory the decision was recognized and enforced, the case is relegated to the exclusive jurisdiction of its institution;

(e) the document confirming the agreement of the parties to the case to contractual jurisdiction is absent;

(f) the limitation period for enforcement provided by legislation of the Contracting State whose court enforces the decision has expired (Article 55, Minsk Convention).

Kiev Agreement. Under the Kiev Agreement (Article 7), the parties assumed the obligation to reciprocally recognize and enforce decisions of competent courts which have entered into legal force. The Kiev Agreement refers to “decisions rendered by competent courts of one Contracting State – Party to the Commonwealth of Independent States subject to enforcement on the territory of other Contracting States – Parties to the Commonwealth of Independent States”. This formulation means that the Kiev Agreement does not provide for a judicial proceeding concerning the authorization of enforcement. A petition to enforce the decision by an interested party may not be regarded as a petition for authorization of enforcement. Therefore, among the documents to be appended to a petition (duly attested copy of the decision concerning whose enforcement the petition was initiated; official document that the decision has entered into legal force if this is not evident from the text of the decision itself; evidence of notification of the other party about the proceedings) also is a writ of execution (Article 8)²⁰. The Kiev Agreement merely provides for a judicial proceeding with regard to a refusal to enforce a decision at the request of the party against whom it was sent and consolidates the list of evidence which must be submitted to the competent court at the place where enforcement is requested. Among such evidence is:

(a) a court of the requested State has previously rendered a decision with regard to a case between the same parties, on the same subject-matter, and on the same grounds and it has entered into legal force;

¹⁸ The Supreme Court of the Russian Federation in a Ruling of 4 October 2011, Re: Case No. 13-Г11-12, pointed out that in accordance with Articles 53 and 54 of the Minsk Convention a court considering a petition to recognize and authorize enforcement of a foreign judicial decision is confined to establishing that the conditions provided by the Minsk Convention have been complied with. In the event of compliance with the conditions, the court renders a decision for enforcement of the decision of the foreign court. Available on Consultant Plus. Such judicial practice was formed long ago and is stable: for example, the Novosibirsk Regional Court in a cassational ruling of 7 August 2018 Re: case No. 33-7749/2018, pointed out that Article 54(2) of the Minsk Convention established as the following: a court considering a petition concerning the recognition and authorization of enforcement of a decision is confined to the establishment that the conditions provided by the present Minsk Convention have been complied with. If the conditions have been complied with, the court renders a decision concerning enforcement of the foreign judicial decision. Available on “ConsultantPlus”.

¹⁹ The Arbitrazh Court of Moscow District in a Decree of 12 October 2017, Re: Case No. A40-11868/2017, noted that by virtue of Article 53(2)(b) of the Minsk Convention a document shall be attached to a petition to authorize enforcement of a decision from which it follows that the party against which the decision was rendered did not take part in the proceedings, was duly and timely summoned to court, and in the event of lack of procedural dispositive legal capacity was duly represented. Proceeding from a literal interpretation of the Minsk Convention, the court of first instance in this case concluded that Article 53(2)(b) of the Minsk Convention imperatively indicated the need to provide an autonomous document concerning due notification. Available on “ConsultantPlus”.

²⁰ According to point 1 of a Letter of the Supreme Arbitrazh Court, No. 96, in the event of the consideration by a Russian arbitrazh court of an application submitted by a recoverer for enforcement of a court decision rendered on the territory of a Contracting State – Party to the Kiev Agreement, in Russia – in the absence of an execution document mentioned in Article 8 of the Kiev Agreement, the court of first instance should leave the application without movement and establish a period during which the applicant should submit the execution document. In the event of his failure to submit within the established period, the court should return the application to the recoverer on the basis of Article 128(4) of the Code of Arbitrazh Procedure of the Russian Federation.

(b) there is a recognized decision of a competent court of a third State which is or is not a member of the Commonwealth of Independent States concerning a dispute between the same parties, on the same subject-matter, and on the same grounds;

(c) the dispute was decided by a court which did not have jurisdiction²¹;

(d) the other party was not notified about the proceedings²²;

(e) the three-year limitation period for submitting the decision for enforcement has expired (Article 9, Kiev Agreement).

The Kiev Agreement thus does not provide for an obligatory judicial proceeding with regard to the recognition and enforcement of a foreign judicial decision rendered by a competent court of a Contracting State, which means recognition and enforcement without a judicial proceeding²³. In this context, a petition by a recoverer to enforce a judicial decision is equal to an application to institute an execution proceeding²⁴. It

should be noted that the Kiev Agreement provides for the possibility of executing judicial decisions not only by bailiffs, but also by other agencies designated by a court or by legislation of the place of enforcement. These agencies may be credit institutions possessing certain powers with respect to the property of the defendant against which execution may be levied by decision of a court.

Moscow Agreement. It should be noted that, in elaboration of the Kiev Agreement and Minsk Convention, another treaty was concluded specially devoted to the recognition and enforcement of judicial decisions with regard to economic disputes on the territory of the Contracting States: the Moscow Agreement of the CIS on the Procedure for the Mutual Enforcement of Decisions of Arbitrazh and Economic Courts on the Territories of States – Participants of the Commonwealth, of 6 March 1998²⁵ (hereinafter: Moscow Agreement). The Moscow Agreement basically excludes a judicial proceeding with regard to a case concerning authorization of enforcement of a foreign judicial decision, which means that such a decision will be enforced equally with decisions of own courts by way of an execution proceeding in accordance with national legislation. The decision of a competent court of one Contracting State that has entered into legal force is enforced on the territory of another Contracting State in an uncontested proceeding (Article 3, Moscow Agreement)²⁶.

By way of an example of the recognition and enforcement of a foreign judicial decision on the basis of a bilateral treaty, we consider the procedure for such recognition and enforcement in accordance with the Moscow Treaty²⁷, which contains Section I: “Legal Assistance and Legal Relations with Regard to Civil and Family Cases” and a Sub-Section entitled “Recognition

²¹ The Arbitrazh Court of Moscow District in a Decree of 10 May 2018 re: case No. A40-59275/2017, pointed out that the participation of a foreign person in a judicial examination and the absence of objections on his part relating to the competence of the arbitrazh court of the Russian Federation before the first application regarding the substance of the dispute confirms by his will consideration of the dispute by the said court. Consequently, a foreign person loses the right to refer to the absence of competence of the particular court (the rule of loss of the right to object) thereafter. Available on “ConsultantPlus”.

²² An Advisory Opinion of the Economic Court of the Commonwealth of Independent States, No. 01-1/4-13, of 26 April 2014, said that, in the opinion of the Court, in the context of this norm “notified about the proceedings” should be understood as actions directed towards informing (or notifying) a party about the judicial proceeding. Such actions within the framework of the Kiev Agreement are undertaken by competent courts and other agencies of Contracting States at the stage of considering the case in essence, including within the framework of mutual rendering of legal assistance. The burden of proof of improper notification lies on the party objecting to enforcement of the decision. However, the party petitioning for enforcement of the decision also by virtue of Article 8 of the Kiev Agreement is obliged to append evidence of proper notification of the other party concerning the proceedings to the petition for enforcement of the judicial decision (available online).

²³ A Decree of the Federal Arbitrazh Court of the Northwestern District of 12 May 1997, No. A56-15024/96 emphasized that in accordance with Article 7 of the Kiev Agreement, Contracting States – Parties to the said Agreement mutually recognize and enforce decisions of competent courts which have entered into legal force. Decisions rendered by competent courts of one Contracting State are subject to enforcement on the territory of other Contracting States. Norms regulating the procedure for petitioning for recognition and enforcement of decisions of competent courts of one Contracting State in the courts of another Contracting State of the Kiev Agreement do not exist. See: “ConsultantPlus”.

²⁴ It should be noted that by a Decision of the Economic Court of the CIS, No. 1-1/1-16, “On Interpretation of Article 8 of the Agreement on the Procedure for the Settlement of Disputes Connected with the Effectuation of Economic Activity of 20 March 1992 in the Part of Recognition and Enforcement of Judicial Acts of Foreign States Adopted with Regard to Cases of an Order Proceeding”,

of 17 June 2016, judicial acts of Contracting States of the Kiev Agreement adopted with regard to the results of the consideration by way of an order proceeding (proceedings in cases concerning the rendering of an order for recovery) are not subject to recognition and enforcement within the framework of Article 8 of the said Agreement (available online).

²⁵ Available on “ConsultantPlus”. The Moscow Agreement entered into force on 9 January 2001. Armenia, Georgia, Russia, Turkmenistan, and Ukraine have not ratified. The Moscow Agreement entered into force for Azerbaidzhan and Tadzhikistan on 9 January 2001.

²⁶ If Contracting States of a bilateral international treaty on mutual assistance are also parties to a multilateral treaty on mutual legal assistance, the court when considering a case to recognize and enforce the decision of a foreign court will apply the bilateral treaty, and with respect to legal relations not regulated by it – the multilateral treaty on mutual legal assistance. See: *Slabospitskii A.S.* Cross-border Execution of Judicial Decisions in the Sphere of Entrepreneurial Activity on the Territory of the Eurasian Economic Union // Russian Justice. 2017. No. 9. P. 72–75.

²⁷ The Treaty between the Russian Federation and the Republic of Moldova on Legal Assistance and Legal Relations on Civil, Family and Criminal Cases of 25 February 1993, entered into force on 25 January 1995. Available on “ConsultantPlus”.

and Enforcement of Decisions". According to Article 50 of the Moscow Treaty, the Contracting States mutually recognize and enforce decisions of justice institutions which have entered into legal force with regard to civil and family cases, as well as judgments relating to compensation of damage caused by a crime. The consideration of petitions to authorize enforcement is within the competence of the Contracting State on whose territory enforcement should be undertaken.

The petition for authorization of enforcement is filed in the court which rendered the decision in the case at first instance. Next the petition is forwarded to the court competent to render a decision with regard to the petition. The requisites of the petition are determined by legislation of the Contracting State on whose territory enforcement should be undertaken. To the petition is attached an attested translation into the language of the Contracting State to court of which the petition is addressed. It is essential to attach to the petition for the authorization of enforcement:

(1) a copy attested by a court of the decision, official document concerning the entry of the decision into legal force unless this follows from the text of the decision itself, and also notification concerning its enforcement if the decision was previously enforced;

(2) a document from which it follows that the defendant who did not take part in the proceeding or his representative was handed a notification of the summons to court in good time and in proper form;

(3) attested translations of the said documents (Articles 51 and 52, Moscow Treaty).

According to Article 53 of the Moscow Treaty, if doubts arise with the court when issuing the authorization for enforcement, it may request explanations from the person who instituted the petition for enforcement of the decision, and also question a debtor with regard to the substance of the petition and, when necessary, request explanations from the court which rendered the decision. According to Article 54 of the Moscow Treaty, the procedure for enforcement is regulated by legislation of the Contracting State on whose territory the enforcement should be undertaken.

According to Article 56 of the Moscow Treaty, recognition of a judicial decision or authorization for enforcement may be refused if:

(1) the person instituting the petition or the defendant in the case did not take part in the proceedings because he or his representative was not handed the summons to the court duly or in a timely manner;

(2) with regard to the legal dispute between the same parties on the territory of the Contracting State where the decision should have been recognized and enforces a decision was previously rendered which entered into legal force or if an institution of this Contracting State

previously instituted proceedings with regard to the particular case;

(3) according to provisions of the Moscow Treaty, and in instances not provided by the said Treaty, according to legislation of the Contracting State on whose territory the decision should have been recognized and enforced the case is relegated to the exclusive competence of its institutions.

* * *

As a conclusion it is important to stress that in Russia, Kazakhstan and Uzbekistan there exist three regimes of effectuation of proceeding on cases with participation of foreign persons: 1) within bilateral international treaties (as a rule, on legal assistance in civil, family and criminal cases); 2) within multilateral international treaties (the Kiev Agreement and the Minsk Convention; 3) within national legislation (the Arbitrazh Procedure Code of the Russian Federation, the Civil Procedure Code of Kazakhstan and the Economic Procedure Code of Uzbekistan).

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