CLIENT NOTE

THE END OF LITIGATION IS NOT AN ILLUSION: RECOGNITION AND ENFORCEMENT OF FOREIGN JUDICIAL ACTS IN ARMENIA

OVERVIEW

It is difficult to underestimate the role of courts and judicial proceedings in settling different types of disputes arising between private parties. Thus, it is not surprising that the right to a fair trial is recognized as a fundamental human right.[1]

So, you got a favorable judgement elsewhere and you want to enforce it in Armenia. Is it possible? Yes. Really? YES! How is that possible? Well, it is a maze, but one can certainly navigate it Armenia. Here we cover just that.

[1] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 14; Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14,* 4 November 1950, ETS 5, Article 6.

One of the main components of the right to a fair trial is the right to effective access to justice.[2] At the same time, without proper insurances that a judicial act rendered by a competent court will be enforced one's right to effective access to justice would become theoretical or illusory instead of being practical and effective as is guaranteed for any individual under the jurisdiction of the Republic of Armenia[3]. While in case of judicial acts rendered in the country where they are to be enforced such acts are being enforced without additional difficulties, in case when a judicial act is rendered in one country, but has to be enforced in another one, difficulties may arise making the right illusory. To avoid such difficulties and to ensure proper enforcement of a foreign judgement one has to delve into the legal framework under which a foreign judgement would be recognized and enforced in a particular jurisdiction.

REGULATION UNDER ARMENIAN LEGISLATION

Which foreign judgments can be recognized and enforced in Armenia?

In order to understand how foreign judicial acts are enforced in Armenia, one has to go through the Code of Civil Procedure of Armenia, pursuant to which, judicial acts in civil cases rendered by the courts of foreign states shall be recognized in Armenia, and those which also need enforcement, shall be enforced as well either in case such recognition and enforcement are envisaged by an international treaty or on the basis of reciprocity. In addition, Code of Civil Procedure provides for a rebuttable presumption of reciprocity.

Contrary to the situation with foreign arbitral awards, where the New York Convention sets a universal recognition and enforcement regime,[4] in case of judicial acts there is no universal convention covering issues of their recognition and enforcement. Nevertheless, Armenia is a party to two multilateral conventions on recognition and enforcement of foreign judicial acts signed within the framework of

[2] ECHR, *Stanev v. Bulgaria*, application no. 36760/06, Judgment [GC], 17 January 2012, § 229.
[3] ECHR, *Perez v. France*, application no. 47287/99, Judgment [GC], 12 February 2004, § 80.
[4] Currently 160 states are parties to 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

the Commonwealth of Independent States – the Minsk Convention[5] and the Chisinau Convention.[6] Thus, the judicial acts rendered by a competent court of a state which is a member of the Commonwealth of Independent States and a party to either of the two above-mentioned conventions, will be recognized and enforced in Armenia by virtue of those conventions. On the contrary, in order to enforce judicial acts rendered by competent courts of other states in Armenia, there should be a bilateral treaty between Armenia and the state where the judicial act has been rendered or based on the principle of reciprocity.

THE MINSK AND CHISINAU CONVENTIONS

Both Conventions regulate legal relations of states which have very close geopolitical links. The majority of the provisions of both conventions are the same, since the Chisinau Convention was drafted on the basis of the Minsk Convention and was intended to replace it. The main difference of the two instruments is that the Chisinau Convention contains more elaborate provisions on extradition as compared to the Minsk Convention. However, in respect of civil and family matters, the provisions of both conventions are substantially similar, and notwithstanding the fact that Chisinau Convention was signed nine years later than Minsk Convention and was intended to replace it, in cases related to civil and family matters Minsk Convention is even of greater importance, since the scope of state parties to that Convention is larger than the scope of those party to Chisinau Convention.[7]

Thus, in case of relations of recognition and enforcement of foreign judicial acts between Armenia and either Belarus, Kazakhstan, Kyrgyzstan or Tajikistan, Chisinau Convention applies, while in case of relations between Armenia and either Azerbaijan, Georgia, Moldavia, Russia, Turkmenistan, Ukraine or Uzbekistan, Minsk Convention applies (nevertheless, in cases related to civil and family matters the provisions of both Conventions are substantially similar).

It is also worth mentioning that no reservations or declarations to those conventions have been specifically made by Armenia.

[5] Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matter of 1993.
[6] Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002.
[7] Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldavia, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan are parties to the Minsk Convention, while the Chisinau Convention has been ratified only by Armenia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan (even though it was signed by 10 countries).

THE PROCEDURE OF RECOGNITION AND ENFORCEMENT

Unless otherwise provided in international treaties, the recognition and enforcement of foreign judicial acts in the Republic of Armenia are performed in accordance with the procedure established by the Code of Civil Procedure. The person in favor of whom the foreign judicial act has been rendered has to submit, within three years after the judicial act has entered into force, an application to the competent court of the Republic of Armenia – the court of the place of residence of the debtor. The Code of Civil Procedure also specifies the list of documents to be attached to the application and the information the application should necessarily contain. Thus, the relevant foreign judicial act, evidence of the latter's entering into force, an official document on the volume and terms of enforcement, an official document certifying that the party to the case which has not taken part in the judicial proceedings had been duly notified of those proceedings should be submitted to the competent court together with the application.

REFUSAL TO RECOGNIZE AND EXECUTE

The Code of Civil Procedure, as well as the two Conventions, regulate matters related to refusal to recognize and execute judicial acts rendered by foreign courts. All three documents establish grounds

for refusing the recognition and execution. Hence, judicial acts rendered by courts of foreign jurisdiction may not be recognized and enforced in cases when such an act has not yet become final and binding under legislation of the country where it has been rendered, the respondent has not participated in judicial proceedings which led to the delivery of the judicial act in question, since he/she has not been duly (in accordance with the procedure established for judicial notifications by domestic law of the country where the judicial act has been rendered) notified of those proceedings, there is a judicial act regarding the same case between the same parties and on the same basis, which had entered into legal force in the jurisdiction where it has been applied for recognition and enforcement, or such a judicial act rendered in a third state has been recognized and/or enforced in the state where an application for recognition and enforcement of that act has been submitted. Furthermore, the requirement of refusal applies in the event the case upon which the judicial act has been rendered is under exclusive competence of the judicial bodies of the country where recognition and enforcement of that judicial act is being sought. In cases the competence of the judicial body which has rendered the judicial act in question is based on a contract signed between the parties to the dispute, the application for recognition and enforcement may be refused if the party seeking recognition and enforcement of that judicial act in a foreign country has not ensured availability of a document certifying such contractual competence. Finally, the recognition and enforcement may be refused in the event the term envisaged for enforcement of judicial acts by legislation of the country where recognition and enforcement are being sought had expired before the application for recognition and enforcement has been submitted.

RECOGNITION OF FOREIGN JUDICIAL ACTS NOT SUBJECT TO ENFORCEMENT

The Code of Civil Procedure establishes a distinct regulation for recognition of foreign judicial acts which are not subject to enforcement. Within the meaning of the Code of Civil Procedure as such acts are considered, for instance, judicial acts related to legal status of a person rendered by the courts of the country of that person's citizenship, foreign judicial acts related to divorce or annulment of marriage of foreign citizens and so on. The competent courts consider cases related to recognition of such foreign judicial acts without holding hearings. The reasons for refusing recognition of such acts are the same as those for refusing recognition and enforcement of foreign judicial acts subject to enforcement.

RECIPROCITY

Nowadays, when the need for recognition and enforcement of foreign judgements gains more practical value, the necessity for establishing a prudent regime for such recognition and enforcement becomes more highlighted. Primarily due to this consideration, as well as for the purpose of broadening long-term international cooperation in the field of justice, the Code of Civil Procedure establishes the possibility to recognize and enforce foreign judicial acts by virtue of principle of reciprocity, which is a cornerstone of international relations in general and international law in particular and has specificities of its application in the Republic of Armenia.

As has been mentioned above, it is provided by the Code of Civil Procedure that judicial acts in civil cases rendered by the courts of foreign states shall be recognized in Armenia, and those which also need enforcement, shall be enforced as well either in case such recognition and enforcement are envisaged by an international treaty or on the basis of reciprocity. Furthermore, the Code of Civil Procedure establishes that the reciprocity shall be deemed to be present unless the contrary is proven. Thus, in the case of absence of a universal international treaty covering the issues of recognition and enforcement of foreign judicial acts, the principle of reciprocity envisaged by the Code of Civil Procedure is of great importance in ensuring the recognition and enforcement of foreign judgments in Armenia, let alone the fact that in practice has never been applied.

HOW WE CAN HELP?

Our team has extensive experience in providing its clients elaborate advice and services related to recognition and execution of foreign judgments in Armenia. So, do not hesitate to get in touch with us in case you need sophisticated advice and effective services on those issues.

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