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SOME ASPECTS OF RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

In the modern globalized world almost all the transactions involve a foreign element which inevitably leads to the disputes arising in a foreign country. This is old news for Russian citizens and companies who find themselves more often than ever in the middle of litigation abroad. However, lawyers are well aware that winning a lawsuit is not the end – seeking recognition and enforcement of the judgment is the next step. Enforcing judgments in Russia is a tricky business, the one that many are not ready to encounter. Although Russia is a party of about thirty agreements on mutual recognition of the foreign judgments, there are no such agreements with major European countries or America. In such cases, the principles of comity and reciprocity come into play. Even if there is a legal basis for recognition, then when is the court allowed not to recognize or enforce it?

Russian foreign policy does reflect the need for establishing a new level of connection with the countries of the world community by enhancing economic, trade and cultural relations. As a prerequisite for this though, Russian legislation must adequately protect the rights and legitimate interests of foreign partners. Certainty of a result is what attracts businessmen, especially foreign investors. Therefore, the law on recognition and enforcement of foreign judgments (hereinafter - REFJ) must lead to a stable and predictable outcome.

This paper is dedicated to analysis of the current Russian legislation, judicial decisions on REFJ as well as writings of scholars on the existing problems obstacles and problems. Moreover, here will be discussed the peculiarities of the law of the United States of America on the recognition and enforcement of foreign-country judgments.

Definition of REFJ. Before defining REFJ, there is a need to distinguish the terms “recognition” and “enforcement” of judgments. “To “recognize” a foreign judgment is in essence to domesticate it, thus making it equal to any other judgment produced by a ...court” [1, 153], thus giving the decision the same effect and authority as if the decision was rendered by that tribunal. Meanwhile, “enforcement” requires the aid of the courts and law enforcement of the enforcing jurisdiction, which may or may not be afforded along with recognition of the judgment” [1, 154]. Differentiating the two categories, some
scholars note that recognition is a passive instrument since it does not require any active actions. Enforcement of foreign judgments, on the other hand, demands the tribunal to take active steps regarding the debtor’s assets” [2, 7].

The definition of “foreign judgment” is given by different legal instruments. For instance, the Uniform Foreign-Country Money Judgments Recognition Act defines it as “a judgment of a court of a foreign country”. It must be noted that the U.S. law also distinguishes the definition of “foreign-country judgment” and “foreign judgment”, the latter meaning the decision of another American sister-state court. The U.S. legislation will be discusses in more detail infra.

Also, the definition can be found in the Hague Convention on Choice of Court Agreements, which states that foreign judgment “means any decision on the merits given by a court”.

Zaycev in its article provides the following definition of REFJ: “a legal act which expresses sovereign state attitude to facts rendered by foreign judicial bodies, thereby extending their jurisdiction over the court’s own legal space [2, 8]. Therefore, the definition and meaning of REFJ are contained in various international treaties, legal assistance agreements, countries’ domestic legislation and writings of publicists. I will address the similarities and differences of those in more detail in my annual paper.

**Law on Recognition and Enforcement of Foreign-Country Judgments.** This part will cover the Russian law on REFJ as well as international conventions (signed by Russia and those to which Russia is not a party), and also the fundamental principles of comity and reciprocity.

**Russian Law on REFJ.** In accordance with Russian legislation, the foreign judgments are recognized and enforced in Russia on the basis of a procedure, envisaged in international treaties and federal law [3, 431]. The norms of Russian national legislature on REFJ could be found in Chapter 31 of Arbitrazh Procedural Code and Chapter 45 of Civil Procedural Code. Thus, there are two procedural forms for recognition and enforcement of foreign judgments – the arbitrazh and civil procedures, which sometimes differ significantly from each other [4, 1120]. The procedure of REFJ is determined not only by procedural laws, but also by international conventions and agreements on legal assistance.


Even though Russia is not a party to the following treaties, they do play an important role in defining the concept of REFJ in international private law: the 2007 Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters and Brussels I Regulation 2000.
These international instruments also stipulate the instances when the court can refuse to recognize or enforce the judgment. For example, the 1993 Minsk Convention lists six conditions, including improper notice, exclusive jurisdiction of the courts, etc.

**The Principles of Comity and Reciprocity.** The principle of comity was defined in *Hilton v. Guyot*, one of the landmark U.S. Supreme Court cases, as “neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws”.

The scholars define the principle of reciprocity as “the idea that States will and should grant others recognition of judicial decisions only if, and to the extent that, their own decisions would be recognized” [5, 6].

These two principles are the cornerstones for the REFJ. The principle of reciprocity is often applied in those cases when there is no treaty on legal assistance between the states. Russian courts do render judgments on the basis of reciprocity and comity. In this paper I will analyze the inconsistent Russian judicial decisions regarding application of these principles and outline the peculiar differences of decisions rendered by arbitrazh tribunals and courts of common jurisdiction.

**U.S. Law on the REFJ.** Unlike Article IV, Section 1 of the United States Constitution, which requires sister state judgments to be given full faith and credit in the courts of all other American states, there is no international “full faith and credit” clause.

Foreign country judgments do not stand on the same level as judgments rendered in the United States. They are not entitled to recognition under the Full Faith and Credit Clause of the United States Constitution. Furthermore, there is no other form of federal legislation or treaty on REFG.

Hence, on the federal level, whether a foreign country judgment should be recognized and enforced is determined by common law. At present, there is no national American approach to the enforcement of foreign country judgments in the United States. There are individual state statutes but they do not exist in all states, and as the scholars suggest that even these statutes are not uniform [6, 341].

The courts are therefore left to decide when to recognize and enforce foreign judgments. Being a favorite alternate ground for rendering a decision, the “public policy” reasoning resurfaces a lot in the American courts’ decisions.

***

The problem of REFJ is crucial in the international civil proceedings. REFJ are possible only on the basis of proper norms of both, national legislation and international treaties. In international procedural law authors single out
characteristics of legal force of a judgment that form a foundation for its recognition and enforcement: obligatoriness, exclusiveness, conclusiveness, prejudicialness and cumulativeness.

The provisions regarding the procedure and grounds for the REFJ are contained in the Arbitration Procedural Code, the Civil Procedural Code, the Federal Law on Enforcement Proceedings and federal laws. The Russian Federation is party to a number of international treaties regarding reciprocal REFJ. In case of absence of international treaty between the parties, principles of reciprocity and international comity may be applied by courts. Both arbitration courts and courts of general jurisdiction are competent to consider cases regarding REFJ.

With new commercial international developments, and with the increase of international trade, commerce and investment, justice requires that international litigants consider not only a resolution of disputes but also the ability to enforce a favorable judgment obtained in a judicial tribunal which hears and determines the cause in a foreign country. The judgment is not final per se, until it was recognized, and the needed remedy was obtained. As been demonstrated supra, the issue of the enforcement is not just a legal one, the certainty of the outcome is essential for stable international transactions. However, not only business is heavily engaged in international litigation; the interests of citizens seeking REFJ must also be taken into account.

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