



AUGUST 2014

The prerequisite for a foreign court ruling to be recognized and executed in Russia

On 27 May 2014, the Presidium of the Supreme Arbitration (Commercial) Court of the Russian Federation published the final text of Judgment No. 3366/13 in case No. A40 - 88300/11-141-741, dated 28 January 2014, wherein the Court set forth the position that failure to give official notice to a respondent located in the Russian Federation of judicial proceedings in a foreign court could serve as grounds for a refusal to recognize and enforce the ensuing decision in the Russian Federation.

The issue of what constitutes sufficient notice for subsequent recognition and enforcement of the foreign court's judgment had not been clearly resolved in judicial practice, which was the reason the matter was submitted for examination to the Presidium of the Supreme Arbitration (Commercial) Court of the Russian Federation (RF SAC). The issue hinged on whether the notice had to be effective (i.e., such that leaves no doubt in the court that the addressee has been duly informed of the relevant judicial proceedings), or official (i.e., in compliance with the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, dated 15 November 1965).

Pursuant to Clause 2 Section 1 Article 244 of the Commercial Procedure Code of the Russian Federation (RF CPC), a commercial court may refuse to recognize and enforce a foreign court judgment, in full or in part, if the party against whom the decision was rendered was not properly notified in a timely manner of the time and location of the case's examination, or could not provide its explanations to the court for other reasons.

Examining this case, the Russian court of first instance established that the respondent, located in the Russian Federation, had received notice of proceedings, sent via the DHL courier service. The court thus came to the conclusion, upheld by the cassation instance court, that the respondent had been properly notified of court proceedings in a foreign court, that it had been provided with the opportunity to submit to the foreign court its response, and that in this connection, there were no grounds to refuse to recognize and enforce the foreign court's decision.

The RF SAC did not agree with the conclusions of the lower courts, maintaining that such notice had not been properly provided.



Pursuant to Article 10 of the Hague Convention, provided that the state of destination does not object, the Convention does not interfere with:

- a. the freedom to send judicial documents, by postal channels, directly to persons abroad;
- b. the freedom of judicial officers, officials, or other competent persons of the state of origin to effect service of judicial documents directly through the judicial officers, officials, or other competent persons of the state of destination;
- c. the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials, or other competent persons of the state of destination.

The RF SAC noted that the Russian Federation, in acceding to the Hague Convention in 2001, exercised its statutory right to object to the simplified procedure for sending, conveying, and receiving judicial and extrajudicial documents to entities located in the Russian Federation. Russia indicated that the competent body for such purposes is the Russian Ministry of Justice.

Taking into account these circumstances, the RF SAC came to the conclusion that although the debtor had received effective notice of foreign judicial proceedings against it, since the notice was actually received by the debtor in the Russian Federation, it had not been sent in compliance with the Hague Convention, and was thus improper.

According to the RF SAC's position, the Russian Federation's statement disallowing the delivery of judicial documents in civil and commercial cases in the ways set forth in Article 10 of the Hague Convention, is worded in a manner that makes it mandatory and is contained in an international treaty. In the legal system of the Russian Federation, it therefore has greater legal force than any law with which delegated legislation must comply. The force of this provision cannot be invalidated as a result of a Russian entity's signing of a foreign economic contract that makes reference to foreign law and the jurisdiction of courts of another country.

Recognition and enforcement of a decision of a foreign court with respect to a respondent located in the Russian Federation require that the entity be given official notice of the judicial proceedings in accordance with the Hague Convention (with the exception of cases in which another international treaty of the Russian Federation, which provides for special rules, is applicable).

If an entity, having received improper notice, has not expressed its intention to participate in the judicial process and has not sent its objections to the claim to the foreign court, there are no grounds for recognition and enforcement of the foreign court's decision. Such improper notifications per se should not entail any negative legal consequences for the entities receiving them in connection with their non-participation in the judicial process.



HOWEVER!

In the event that an entity, having received notice that was not sent according to official procedure, does participate in the proceedings, including through the provision of explanations to a court of foreign jurisdiction, such an entity cannot later cite improper notice of judicial proceedings.

This RF SAC judgment also provides for the possibility of reconsideration, on the grounds of new circumstances, of the judicial acts of commercial courts that have come into force in cases with similar factual circumstances.

Taking into account the changes occurred in the judicial system of the Russian Federation and the abolition of the RF SAC its positions will be in force until new positions of the Supreme Court on the relevant issues are formulated. At the same moment we see no reason to change the position expressed in the analyzed ruling in the near future.

CONCLUSIONS

- 1 Proper notice to entities located in the Russian Federation regarding judicial proceedings in a foreign court is considered official notice pursuant to the Hague Convention (provided that the country of the court is a party to the convention).
- 1 In the absence of proper notice of proceedings in a foreign court, the respondent may decide not to participate without risk of the decision being recognized and enforced in the Russian Federation.
- 1 If an entity has taken part in a process, including through the provision of explanations to a court of foreign jurisdiction, such an entity cannot later cite improper notice in its objection to the recognition and enforcement of a foreign court's decision in Russia.
- 1 In the event that a foreign treaty of the Russian Federation provides for special rules regarding the delivery of judicial notice vis-à-vis the Hague Convention, the rules of such a treaty shall be applied.

Key Contacts



Ilya TUR

Counsel,
Head of Litigation Practice
(St. Petersburg)

ilya_tur@epam.ru



Alexandra STELMAKH

Associate,
Litigation Practice
(St. Petersburg)

alexandra_stelmakh@epam.ru

Subscription

You have received this information because this topic may be of interest to you. If you have received this information in error, we would like to extend our apologies and ask that you send us an unsubscribe request.

To unsubscribe from Egorov Puginsky Afanasiev & Partners's mailing list, please reply to this email with [Unsubscribe](#).

To subscribe to our legal alerts, please reply to this email with [Subscribe](#) as email subject.