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**THE ORDER OF RECOGNITION AND ENFORCEMENT OF  
FOREIGN COURTS’ DECISIONS IN UKRAINE**

The article researches the order of recognition and enforcement in Ukraine of foreign courts’ and arbitrations’ decisions, as well as decisions of international judicial institutions, such as the European Court on Human Rights. The differences of terms, grounds and procedural order of recognition and enforcement in Ukraine of foreign courts’ and arbitrations’ decisions depending on the type of such decisions are analysed.

**Keywords:** court’s judgement, foreign court, arbitration, enforcement of decisions, European Court on Human Rights

**Problem statement.** Under Art. 14 of the Civil Procedure Code of Ukraine, judicial decisions that have come into the force of law, mandatory for all governments and local self-governments, enterprises, institutions, organizations, officers or employees and citizens and are to be observed throughout the territory of Ukraine, and in cases established by international treaties, ratified by the Verkhovna Rada of Ukraine, – outside the territory of Ukraine.

However, in cases when there is a need to execute the judgment that is rendered by court of one state in the territory of another there can be problems connected with recognition of validity of such decision in the territory of this state. T.Y. Fortuna says that the action of the judgment rendered by court’s of one state is limited to the territory of this state as the judgment is considered as part of law and order of that state within which jurisdiction it was rendered [1, p. 41].

At the same time, world globalization processes, tendencies to simplification of movement of goods and people through borders of the different countries demand improvement of the mechanism of implementation of judicial protection of natural persons and legal entities in cases when adoption of the judgment and its execution is carried out in the different countries. Above-stated confirms the topicality of this research.

**Analysis of recent researches and publications.** The problems of recognition and enforcement in Ukraine of the judgments of foreign courts have become the object of research of such scientists as V.A. Begun, M. M. Boguslavsky, A.I. Yevtushenko, R. Zaytsev, V. V. Komarov, N. A. Lev, N. I. Marysheva, Y.D. Prityk, T.Y. Fortuna, S. Y. Fursa, M. I. Stefan, etc.

**Paper purpose.** The aim of this scientific article is research of different types of the foreign courts' judgment, their separation from adjacent legal categories and definition of an order of their recognition and enforcement in Ukraine.

**Paper main body.** To investigate an order of recognition and enforcement of the foreign courts' judgment in Ukraine, it is necessary to decide accurately which foreign courts' judgment are subject to recognition and enforcement in Ukraine.

A.I. Yevtushenko offers the following classification of decisions depending on the status of body, which made it, and such decisions will be provided taking into account their force: 1) the decisions rendered by the international courts which are created on the basis of multilateral contracts including decisions of the European Court's of Human Rights; 2) the decisions rendered by the state courts taking into account the "hierarchical" structure of judicial authority: the supreme judicial bodies of the state; appeal instances; local courts; magistrates; 3) decision of arbitrations of foreign states [2, p. 194].

Without denying against the right for existence of the above classification, it is necessary to notice that decisions of judicial authorities associated in it are very different; therefore the conditions, bases and an order of recognition and enforcement in Ukraine of each of the above types of judgments significantly are different too.

The first group doesn't include foreign courts' judgments, but the international judicial institutions which aren't included in judicial system of any state and are supranational establishments. They are created on the basis of international agreements and extend the jurisdiction to those states which signed and ratified the relevant international legal contract. The circle of the questions having the right to solve these judicial authorities and the force of their decisions are also defined by these international treaties.

The European Court of Human Rights is an example of the international institutions of the kind. It was formed on the basis of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4.XI.1950). Except this convention and some other the international legal documents accepted in development of its provisions, the order of recognition and enforcement in the territory of Ukraine of decisions of the European Court of Human Rights is regulated by standards of the legislation of Ukraine, in particular, provisions of the Law of Ukraine of 23.02.2006 № 3477-IV "On Execution of Decisions and Applications of Practice of the European Court of Human Rights".

Ukraine has ratified the Convention on Protection of Human Rights and Fundamental Freedoms, and, thereby, recognized the jurisdiction of the European Court of Human Rights and the obligation of its decisions for itself. Unlike of the foreign courts' judgments which get binding force and properties of feasibility in the territory of Ukraine only as a result of the certain procedure, that is adoption of the certain decision by Ukrainian courts (so-called "exequatur"), the decision of the European Court of Human Rights regarding collecting a fair satisfaction is considered as obligatory to execution in the territory of Ukraine (if, of course, it was accepted "against Ukraine") right after acquisition of its final status and doesn't need procedures of confirmation of validity in Ukrainian judicial bodies. Under Part 9 of Para. 2 of Art. 17 of the Law of Ukraine "On Executive Production" (21.04.1999 № 606-XIV) the decision of the European Court of Human Rights is included in the list of the executive documents which are subject to compulsory execution by the public executive service under this law on an equal basis with the executive documents issued by Ukrainian courts.

So, within ten days from the date of obtaining the notification from the European Court of Human Rights about the entry of decision into legal force, the responsible body which represents Ukraine in the European Court of Human Rights and coordinates the implementation of its decisions (Representative Body): a) sends to the person according to which appeal the European Court of Human Rights rendered the decision (recoverer) the message with an explanation of its right to

submit the application for compensation payment in which requisites of the bank account for transfer of payment have to be specified to the public executive service;

b) sends to the public executive service the original text and the translation of resolute part of the final decision of the European Court of Human Rights in case against Ukraine that confirmed a violation of the Convention, the original text and the translation of resolute part of the final decision of the European Court of Human Rights on a fair satisfaction in case against Ukraine, the original text and the translation of the decision of the European Court of Human Rights on friendly settlement in case against Ukraine, the original text and the translation of the decision of the European Court of Human Rights on approval of conditions of the unilateral declaration in case against Ukraine. Authenticity of the translation is certified by the Representative Body.

The public executive service opens executive procedure within ten days from the date when the afore-referenced documents came.

Payment to the recoverer of compensation has to be made during three-months from the moment when the decision entered into force or in time, provided in the decision.

For the purpose of ensuring restoration of the violated rights of the recoverer, except compensation payment, additional measures of individual character are taken.

Additional measures of individual character are: a) restoration to original condition which the recoverer had before violation of the convention (*restitutio in integrum*); b) other measures provided in the decision.

The restoration to original condition which the recoverer had before violation of the convention (*restitutio in integrum*), is doing by review of judicial decisions, which violated the rights of the recoverer, by the Supreme Court of Ukraine on the basis provided by Part 2 of Para.1 of Art. 355 of the Civil Procedure Code of Ukraine.

Other situation developed with the order of recognition and enforcement in the territory of Ukraine of foreign courts' judgments. According to provisions of Art. 390 of the Civil Procedure Code of Ukraine it is possible to draw a conclusion that as the

foreign courts' judgments, admit and carried out in Ukraine, it is necessary to understand decisions of courts of foreign states; other competent authorities of foreign states within which competence consideration of civil or economic cases is; foreign or international arbitration.

As the administration of justice is an act of the state sovereignty, national court divests of authority outside the country and can't carry out any legal proceedings abroad [3, p. 6]. At the same time deepening of the international cooperation on legal questions led to the conclusion of a large number of interstate agreements about mutual recognition and enforcement of foreign courts' judgments. The above is a pledge of effective protection of interests of participants of foreign-economic relations and strengthening of the international legal order. Therefore the question of recognition and enforcement in the territory of Ukraine of foreign courts' judgments is regulated in detail in standards of the current legislation of Ukraine.

Under Art. 81 of the Law of Ukraine "On the International Private Law" of 23.06.2005 № 2709-IV, the foreign courts' judgment may be recognized and enforced in Ukraine in cases which are being arisen from civil, labor, family and economic legal relationship, foreign courts' judgments in criminal procedures in the part concerning compensation of damage and caused damage, and also judgments of arbitration and other bodies of foreign states which competence includes consideration of civil and economic cases entered into force.

Recognition of foreign courts' judgment is an extension of force of foreign courts' judgment on the territory of Ukraine in the order established by the law (Part 10 of Para.1 of Art. 1 of the Law of Ukraine of 23.06.2005 № 2709-IV "On the International Private Law").

V.A. Begun says that recognition of the foreign courts' judgment is the necessary prerequisite of its compulsory execution which is possible only as a result of the corresponding order of competent court of that state in which permission to such execution is requested. In other words, recognition of the foreign courts' judgment can take place without its implementation whereas implementation is

impossible without its recognition [4, c. 1094]. It depends on the type of the foreign courts' judgment (the judgment on right recognition or the judgment on award).

The judgment of right recognition is such a decision by which existence (or absence) of certain legal relationship between the parties is confirmed [5, p. 363]. The specified court's judgment only confirms officially relevance to the claimant of a certain subjective right. Thus, the respondent isn't obliged to enforce such court's judgment in nature. Therefore such decision isn't subject to compulsory execution. Under Para. 17 of the Resolution of Plenum of the Supreme Court of Ukraine of 24.12.1999 № 12 "On Practice of Consideration by Courts of Appeals for Recognition and Enforcement of Foreign Courts' and Arbitrations' Judgments and About Cancellation of the Decisions Rendered by the International Commercial Arbitration in the Territory of Ukraine" such courts' judgments are decisions on recognition of rights, announcements of bankruptcy, recognition as invalid of certain acts, recognition, contest or deprivation of paternity, divorce, establishment of the facts having legal value, adoptions, recognition of persons as unknown absent or dead, etc.

The judgment of award is such a decision, by which rights, duties and legitimate interests of the parties are officially confirmed, and their compulsory execution by one party in favor of another is awarded [5, page 363]. Implementation of instructions of such courts' judgments is possible in a voluntary order by the debtor or forcibly – by the public executive service bodies.

So depending on the type of foreign court's judgments (whether it is subject to compulsory execution or not) the Civil Procedure Code of Ukraine defines procedure of its recognition and enforcement in the territory of Ukraine. Consideration and solution of the question of recognition and enforcement of foreign court's judgment which must be enforced, and recognition of the foreign court's judgment which mustn't be enforced are carried out at the same procedure. There is only difference in the appealing period in court for solution of recognition and enforcement question of the foreign court's judgment, which must be enforced, and in the duty of the court to

discover, in what part of foreign court's judgment was not being enforcement or whether it was enforced in general.

The order of recognition and enforcement of foreign court's judgment has certain features. It is based on provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York in 1958 (the New York Convention).

This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a state other than the state where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the state where their recognition and enforcement are sought.

The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

In this case it talks about the judgements of internal arbitrations of Ukraine (*treteiskiy* court), which function in the territory of Ukraine and being understood as arbitrations in the world terminology. The main sign of such courts is a non-state nature of establishment and contractual jurisdiction.

The arbitral awards get binding force for the parties of a dispute as a result of the conclusion by the parties of arbitration agreement (clause) by which the parties determine for themselves an order of settlement of the dispute and accept the duty to recognize and carry out decisions of this arbitration.

Due to it the appropriation of an order of recognition and enforcement of foreign arbitral awards to Section VIII of the Civil Procedural Code of Ukraine, which is dedicated to recognition and enforcement of foreign courts' judgments in Ukraine, is disputable. There is Chapter 2 of Section VII-1 in the Civil Procedural Code of Ukraine, which is dedicated to legal regulation of the procedure of issuance of court's receiving orders for execution of internal arbitrations' (*treteiskiy* court)

judgements. This procedure is most corresponded to the essence of the arbitral dispute settlement.

As far as the foreign arbitrations' judgments are not based on the force of the law of a certain state, which is used for the solution of case by foreign court, and are not manifestation of its sovereign power, they are based on the force of the contract, containing the arbitration clause, or of the arbitration agreement, which are concluded between the parties of a dispute, that is why the question of execution of such an arbitration' judgement should not depend on existence of certain interstate agreements or on the principle of reciprocity.

**Conclusions.** Therefore, the foreign courts' judgments are decisions of courts and other competent authorities of foreign states, within which competence consideration of civil or economic cases is, and which force is based on the sovereignty of judicial authority of this state.

It is necessary to distinguish the foreign courts' judgments and the international judicial institutions' judgments (for example, of the European Court of Human Rights) which are not included in judicial system of any state and are supranational formations. They are based on international treaties and extend the jurisdiction to those states which signed and ratified the corresponding international treaty.

It is impossible to consider reasonable the appropriation to the foreign courts' judgments of the foreign arbitral awards because their binding force is not connected with sovereign judicial authority of a certain state, but with the force of an arbitration agreement (arbitration clause), and therefore recognition and enforcement of foreign arbitral awards in the territory of Ukraine shouldn't depend on the existence of the international treaty, the consent to which obligation is provided by the Verkhovna Rada of Ukraine, or on the principle of reciprocity.

Due to the above, it is offered to exclude legal provisions about the order of recognition and enforcement of foreign arbitral awards from Section VIII of the Civil Procedural Code of Ukraine that is dedicated to recognition and enforcement of foreign courts' judgments in Ukraine and to include them to the section VII-1 of the Civil Procedural Code of Ukraine, which is dedicated to legal regulation of



procedures in cases of impugment of internal arbitrations' (*treteiskiy sud*) decisions and of issue of court's receiving orders for execution thereof.

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