

Obstacles in Enforcing ICA Awards in Uzbekistan

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Abstract: The norms and provisions of international and regional agreements on the enforcement of ICA awards are incorporated into the national procedural legislation and state courts strictly follow the provisions of the procedural legislation of Uzbekistan. According to the procedural legislation of Uzbekistan, a party who wants to enforce an ICA award has to submit application (in a form established by law) to an appropriate state court of Uzbekistan in line with the general rule of jurisdiction with the necessary documents attached to it. Failure to adhere to requirements for the application form or list of attached documents is the basis for rejecting the application.

Keywords: arbitration; international commerce; public policy.

ICA is a new institution in Uzbekistan. Although, there were arbitration courts within the national level but they were just mere competitors to the state economic courts. There has not been such an international practice dealing with international commercial disputes in the country. Compared to other CIS countries, ICA is one the youngest and rapidly progressing alternative dispute settlement system in Uzbekistan. In spite of constant progress of arbitration, interrelated systematic problems exist within the enforcement phase of ICA awards.^[24] First, there is no unified procedure and regulations for the recognition and enforcement of ICA awards. Local bureaucracies can be the next big problem for the enforcement of ICA awards in country.^[24] Following problems are inappropriateness of collecting information about this category of cases, ambiguous content of the state PP and the low level of interaction of state courts on issues of enforcement of awards constitute the biggest challenges for the further development of arbitration and Uzbekistan as a whole.

1. Nonexistence of the clear procedure

One of the key problems is the lack of detailed information on the procedure for the enforcement of ICA awards in a simplified and understandable form. The order of process should be exclusively presented in the procedural legislation of Uzbekistan. National legislation is presented in Russian and Uzbek languages, without translation in English. As a result of the lack of such information on the procedure for recognizing and enforcing ICA awards applications for the recognition and enforcement are sent to various bodies, including the Supreme Court of Uzbekistan, Ministry of Justice, Ministry of Foreign Affairs, General prosecutor's office or the Bureau of Compulsory Enforcement under the General Prosecutor's Office of Uzbekistan.² These circumstances force the indicated departments to redirect or clarify the procedure for the enforcement of ICA awards which leads to an increase in the time length and reduce the confidence in judicial system of the country.

Information system implemented in civil courts which allow to fill applications in electronic form, do not contain such type of appeal as "for recognition and enforcement of a foreign court decisions or arbitral award".³ A similar system implemented in economic courts, although it contains this type of appeal but classifies it as "a claim proceeding" which is misleading in terms of the procedure for considering such applications.

2. Lack of unified procedural legislation

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² Supra note 60.

³ Supra note 60.



Existing differences in EPC and CPC of Uzbekistan do not contribute to the formation of unified judicial practice. One can note that applications for the enforcement of ICA awards are considered by second-tier courts in economic cases⁴ while such applications are considered by first-tier level civil court.⁵ Next difference is the established time period for considering such cases, in economic courts it is six months⁶ and one month in civil courts (from the date of receipt of an application).⁷

Significant difference that causes difficulties include the grounds for declining to enforce ICA awards provided in EPC and CPC of Uzbekistan. If Art. 370 of CPC combines in one article the grounds for refusing a “decision of a foreign court or arbitral award”, EPC contains two separate articles providing basis for declining to recognize and enforce a decision of a foreign state court (Art. 255) and arbitral award (Art. 256). Moreover, international treaties of the Republic of Uzbekistan contain various grounds for refusing the enforcement of decisions of foreign state courts (such as Minsk Convention)⁸ and foreign arbitral awards (NYC).⁹ It should be noted that if there is a conflict between international treaty and national laws, international treaties prevail (those Uzbekistan is a member).¹⁰

Under Art. 328 of the Tax Code of Uzbekistan, applications for the enforcement of ICA awards are classified as objects of state duty collection.¹¹ Confirmation of the payment and postage must be attached to the application, unless otherwise provided by an international treaty of Uzbekistan. Such reference places responsibility for determining the need to pay the state fee on interested parties. At the same time, it is not possible to independently determine the amount of the state duty due to the lack of relevant norms in the rates of the state duty, as well as information on websites of authorized bodies.

3. Inappropriateness of collecting information about this category of cases

As noted above, the information systems of civil courts that allow to fill applications to courts in electronic form do not contain such type of appeal as an “application for recognition and enforcement of an arbitral award”, and a similar system implemented in economic courts, although it contains this type of appeal but classifies it as “a claim proceeding”.¹² As a result, the bank of decisions of courts in civil cases posted on the website of Supreme Court of Uzbekistan does not allow to form a list of cases on this category. Consequently, an inappropriate classification of this type of application on recognition and enforcement, the bank of decisions of economic courts incorrectly indicate them as decisions or a ruling to terminate a case.¹³ Considering that such information systems are aimed, among other things, at collecting complete and reliable information on the activities of state courts considering applications on recognition and enforcement, in the absence of such a category of applications or incorrect classification of such a category of cases lead to an incomplete collection of information. This situation results in the need for manual collection of information on these types of cases.

In addition, if such category of applications will be separated as “an application for the recognition and enforcement of an arbitral award” and the list of documents that should be attached with an application will be clearly indicated, then it would be more convenient to fill such applications in state courts and it could be simple to categorize and collect such decisions of state courts in Uzbekistan.

4. Issues of interaction on recognition and enforcement

⁴ Art. 249. *Supra* note 17 and 60.

⁵ Art. 365. *Supra* note 18 and 60.

⁶ Art. 254. *Supra* note 17.

⁷ Art. 369. *Supra* note 18.

⁸ Convention “On legal assistance and legal relations in civil, family and criminal affairs” 22 January 1993[S], Minsk. [2020–11–23]. <https://lex.uz/docs/2741652>.

⁹ *Supra* note 2.

¹⁰ Law of the Republic of Uzbekistan “On International Treaties of the Republic of Uzbekistan” N.518 06 February 2019[S], Tashkent. [2020–11–24]. <https://lex.uz/docs/4193763>.

¹¹ *Supra* note 27.

¹² *Supra* note 60.

¹³ *Supra* note 60.



Art. 36 of the Law “On International Treaties of the Republic of Uzbekistan” requires monitoring the enforcement of courts decisions and arbitral awards on the territory of Uzbekistan and in other countries.¹⁴ The reciprocity principle requires similar monitoring in countries with which Uzbekistan does not have agreements governing the procedure for the enforcement of state court decisions and arbitral awards. The existence of an effective mechanism for interaction of the judicial system of Uzbekistan with other countries (primarily with CIS countries) can become the basis for a dialogue between judicial systems to improve legislation, thereby increase the reputation of Uzbekistan at the regional and international level.¹⁵ The absence or inefficiency of such a mechanism can negatively affect rights and interests of citizens and business entities of Uzbekistan in the enforcement of decisions of national courts and arbitral awards in abroad.

5. Ambiguous content of the state PP

Art. 5 of NYC lists grounds for refusing to enforce an ICA award including the violation of PP of a country. However, in provisions of the current legislation of Uzbekistan, a clear definition of PP and the criteria by which a decision is considered contrary to it are not vividly defined. It should be noted that the number of refusals in recognition and enforcement is currently at a low level. Moreover, there is no such information that national courts declined the enforcement of an ICA award on this basis.¹⁶ Nevertheless, the absence of a clear concept of “PP” in the legislative norms and criteria for determining contradiction with PP may further lead to different interpretations of the norms in judicial practice of Uzbekistan.

The extent of PP is subject to a range of interpretations not only by courts of Uzbekistan but also by courts of various nations, as can be seen by below analysis. Whether it is possible to achieve a clear description of this term, in particular cases regarding to the enforcement of ICA awards and whether it is possible to find approval of the notion of international PP (hereinafter IPP) or not will be discussed below. Many matters are still need to be addressed in this regard. The following chapters will analyze the overall content of PP. By distinguishing the notion of foreign PP in national affairs and IPP, a difference will also be made between PP tests. This can be used in foreign treaties that would limit judicial interference to ICA awards to a minimum.

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¹⁴ Supra note 47.

¹⁵ Supra note 60.

¹⁶ Supra note 60.



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