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Enforcement of Foreign Judgments

Fundamental Principles [Ukraine]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer: Yes. Foreign judgments can be enforced in the territory of Ukraine once recognised by the competent domestic court.

B. Applicable Law: General Rules

1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer: Enforcement of foreign judgments is governed by applicable international instruments and conventions. If there is no international agreement between Ukraine and a foreign state, the principle of reciprocity applies. The procedure is set out in Chapter IX.1-2 of the Civil Procedure Code of Ukraine.

Ukraine is a party to the Hague Convention on Civil Procedure of 1954, which applies only to the recognition and enforcement of foreign orders for costs and expenses of proceedings. Ukraine also ratified two relevant multilateral treaties, which were concluded between the members of the Commonwealth of Independent States (CIS), in particular:

- the Minsk Convention on Legal Assistance and Legal Relations in Civil, Matrimonial and Criminal Cases of 1993 (along with Ukraine, the parties to this treaty are Azerbaijan, Belarus, Armenia, Kazakhstan, Moldova, Tadzhikistan, Turkmenistan, Uzbekistan, Georgia, Kyrgyzstan, and Russia); and
- the Kyiv Convention on Settlement of the Commercial Disputes of 1992 (along with Ukraine, the parties to this treaty are Belarus, Armenia, Kazakhstan, Tadzhikistan, Turkmenistan, Uzbekistan, Kyrgyzstan, and Russia).

The reciprocal recognition and enforcement of foreign judgments is also prescribed in some bilateral treaties for legal assistance and legal relations to which Ukraine is a party (mutual assistance treaties), in particular with Albania (1958), Bulgaria (2004), China (1993), Cyprus (2004), the Czech Republic (2001), Estonia (1995), Georgia (1995), Greece (1981), Hungary (2002), Iran (2004), Iraq (1973), Italy (1979), Latvia (1995), Libya (2008), Lithuania (1993), Macedonia (2000), Moldova (1993), Mongolia (1995), Poland (1993), Romania (2002), Tunis (1984), Turkey (2000), Uzbekistan (1998), Vietnam (2000) and Yemen (1985).

Where a judgment is rendered by a court in a foreign state with a bilateral agreement in force with Ukraine, the provisions of the agreement will

apply to the process of recognition and enforcement. That said, most of the bilateral treaties do not apply to judgments in commercial disputes.

Ukraine signed the Hague Convention on Choice of Court Agreements, however, has not ratified this convention yet. Also, Ukraine has reportedly signed the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, which is not, however, ratified yet.

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Ukraine is not a member state of the European Union.

2. Does the European Union have a special procedure to enforce court judgments coming from its member states?

Answer: Ukraine is not a member state of the European Union.

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: In a first instance court, the court's consideration of the application can last up to two months. The actual duration may be longer depending on court's caseload, actions of the respondents, complexity of the matter, and so on. If the appeal is lodged, it may take another 3-4 months for the appeal review of the first instance court judgment. In a case of second (cassation) appeal, the proceeding may take another 3-4 months.

II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes, under the provisions of Article 468 of the Civil Procedure Code of Ukraine, the court may refuse to grant the motion to recognise and enforce the foreign judgement in the cases when:

- foreign judgment has not entered into force under the laws of its rendering state;
- losing party could not present its case because it was not duly and timely notified of the proceedings;
- foreign judgment is rendered on a subject within the exclusive competence of Ukrainian courts;

- Ukrainian judgment on the same dispute between the same parties is in force or Ukrainian proceedings on the same dispute between the same parties were instituted before the foreign ones and are pending;
- interested party has missed the statutory time limit for enforcement;
- subject of the dispute may not be brought before the court under the laws of Ukraine;
- enforcement will threaten Ukrainian interests (this ground will typically be invoked when a sanctions issue is the subject-matter of the case);
- a foreign judgment on the same dispute between the same parties has already been recognised and enforced in the territory of Ukraine.

Each matter will be considered by the court on a case-by-case basis.

The Law of Ukraine on International Private Law, Article 81, provides that Ukraine does not enforce judgements of foreign states for recovery of debts of state-owned entities of strategic importance (those related to defence) if the judgement is rendered in favour of a legal entity owned or controlled by the aggressor and/or an occupying state.

However, if a bilateral or a multilateral treaty applies, it constitutes a legal basis for enforcement, and the reasons for denial stated in such treaties are respectively referred to.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: In accordance with Article 3 of the Law of Ukraine “On Court Fees”, upon lodging the application to recognise and enforce foreign court judgment, the creditor would incur court fee, approximately, in the amount of 38 EURO for legal entities and 15 EURO for individuals. The creditor would also incur translation fees (if the need for translation of documents to Ukrainian arises), as well as lawyers’ fees for representation of the case in court.

If coercive enforcement against debtor is lodged, the creditor would also incur expenses, which will depend on the chosen method of enforcement (whether the creditor chooses private bailiff or the State Enforcement Bailiff Service).

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: Under Article 463 of the Civil Procedure Code of Ukraine, a foreign judgment may be referred for enforcement to the Ukrainian courts within three years, starting from the day after the foreign judgment entered into force.

The only exception is a foreign court judgement on recovering periodic payments, which may be referred for enforcement to the Ukrainian courts during the entire term of the recovery with the extinguishment of debts over the past three years.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: Under Article 466 of the Civil Procedure Code of Ukraine, the motion to enforce the foreign court judgment shall include evidence of such judgment entering into force, if that is not indicated in the judgment itself.

Also, under provisions of Article 468 Civil Procedure Code of Ukraine, if the foreign judgment did not enter into force, the court may deny recognition and enforcement in Ukraine.

C. Necessary Requirements

1. What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?

Answer: Under provision of Article 466 of the Civil Procedure Code of Ukraine, to be recognised and enforced in Ukraine the foreign judgment must have entered into force. The creditor must also confirm that the judgment in the foreign court proceeding has been rendered with due notice submitted to the other party, if such party did not participate in the proceeding.

Other requirements may be provided for by an international agreement in force with Ukraine or bilateral treaties. For instance, under Article 22 of the Agreement between Ukraine and the Republic of Cyprus on Legal Assistance in Civil Matters (2004), there should be a certificate on finality of the judgement.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay court fees for this kind of application?

Answer: Yes. Under Article 3 of the Law of Ukraine “On Court Fees”, it is mandatory to pay court fee for this kind of application. When filing an application for enforcement of a foreign court judgement, a claimant has to enclose a pay check on court fees. Upon lodging the application to

recognise and enforce foreign court judgment, the creditor would incur court fee, approximately, in the amount of 38 EURO for legal entities and 15 EURO for individuals.

Claimant may ask the court to recover the court fees from the counterparty.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent court

1. Which court or courts are competent to decide an enforcement application?

Answer: Under Article 464 of the Civil Procedure Code of Ukraine, the competent domestic civil court of first instance, depending on the place of residence (location) or place of registration of the debtor, will consider the enforcement application.

If the debtor does not have a place of residence (location) or place of registration in the territory of Ukraine, or place of residence (location) or place of registration is unknown, the issue of granting permission to enforce a foreign court judgement shall be considered by the court depending on the location of the debtor's property assets in the territory of Ukraine.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: An interested party must file a written application for recognition and enforcement of a foreign judgment, indicating details of the parties and the reason for the application. The reason must include:

- The fact that the foreign judgment was rendered and has entered into force.
- Details of the foreign court.
- Any claims that were granted by the judgment.

If necessary, the applicant may request the Ukrainian court to grant interim measures pending the final judgment on recognition and enforcement.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: An application for enforcement of a foreign judgment must provide the following information according to Article 466(3) of the Civil Procedure Code of Ukraine:

- Certified copy of the judgment.
- Formal certificate of the judgment entered into force.
- Formal notice that a party that did not participate in the consideration of the case was duly notified of the proceedings.
- A document specifying which part of the judgment must be enforced (if applicable).
- Documents certifying the powers of the legal representative.
- Duly certified translation of any documents into Ukrainian, confirmation of payment of court fee and the copy of all the above mentioned documents to be submitted to the debtor.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: An interested party must file an application with the competent domestic court of first instance for recognition and enforcement of the foreign judgment. The first instance court judgment may be further submitted for appeal or second (cassation) appeal review.

After the court judgment recognising the foreign judgment enters into force, it may further be submitted for coercive enforcement under the general procedure provided for coercive enforcement of domestic court judgments. For this purpose, the court in charge of the case of recognition and enforcement issues a writ of execution.

The claimant refers to the State Bailiff Service or private bailiff to have the court judgment enforced against the debtor or its assets.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes, a defendant may oppose within one month after the court notifies the defendant of the enforcement application.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: Yes. These are limited procedural grounds, set forth in answer to section II A above.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?

Answer: Yes. The first instance court decision on recognition and enforcement may be challenged in both first and second (cassation) appeal courts.

2. Can this appeal suspend the enforcement?

Answer: Yes. According to Article 273 of the Civil Procedure Code of Ukraine, the judgment of a first instance court does not enter into force if the appeal is filed, until the appeal is finally resolved.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: Article 141 of the Civil Procedure Code of Ukraine allows the court to order that the judgment debtor covers the judgment creditor's costs. The court will also consider the conduct and the demands of the parties when deciding who should pay the costs of the application.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: The assets subject to enforcement include:

- Debtor's monetary funds from bank accounts.
- Debtor's shares.
- Debtor's rights to intellectual property.
- Movable and immovable property.
- Salary/pension/other income.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: Under the Civil Procedure Code of Ukraine, a court is not authorised to review the actions of a foreign court in assuming jurisdiction, unless the subject matter of the dispute is within the exclusive jurisdiction of the Ukrainian court. Additional competences for an enforcing court may be contained in bilateral and multilateral agreements.

Submitted by

	Contact 1	Contact 2 (optional)	Contact 3 (optional)
Contact Name:	Markian Malskyy	Oksana Karel	Iurii Rybak
Firm Name:	ARZINGER Law Firm	ARZINGER Law Firm	ARZINGER Law Firm
Email:	Markian.Malskyy@arzinger.ua	Oksana.Karel@arzinger.ua	Iurii.Rybak@arzinger.ua
Phone #:	+380 32 242-96-96	+380 44 390-55-33	+380 44 390-55-33
Website:	https://arzinger.ua/en/our-team/markiyan_malskiy/	https://arzinger.ua/en/our-team/oksana_karel/	