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Review Article

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN UZBEKISTAN

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ABSTRACT

Background: *The recognition and enforcement of foreign arbitral awards reflect the business climate of a given country. Foreign investors and businesses closely monitor whether these processes align with established international standards, as they may affect their business. The business community prioritises effective dispute resolution and enforcement procedures. Thus, for Uzbekistan, addressing this matter is important not only to improve its business climate and attract foreign investment but also, from a wider perspective, to ensure access to justice.*

Methods: *This research is based on primary data collected from court decisions on the recognition and enforcement of foreign arbitral awards in Uzbekistan. It employs both qualitative and quantitative research methods. These decisions are then subjected to legal review and analysis to assess their compliance with international standards, utilising a comparative legal research approach. The research is also underpinned by relevant legal scholarship and international case law.*

Results and conclusions: *An analysis of Uzbek court decisions on the recognition and enforcement of foreign arbitral awards from December 2018 until June 2024 has led to key findings and conclusions. While minor oversights were observed at the first-instance court level, economic courts followed the international standards of a pro-enforcement approach and narrow interpretation of the grounds for refusal of the applications for recognition and enforcement. In most cases, the Supreme Court of Uzbekistan demonstrated a commitment to aligning with best international practices in this area. Additionally, economic courts interpret public policy narrowly, which is in line with international standards.*

1 INTRODUCTION

The adoption of the long-awaited law on International Commercial Arbitration on 16 February 2021 (the ICA Law) and its entry into force in August 2021 was a major event in the Uzbek arbitration community.[1] The ICA Law filled a critical gap in Uzbekistan's alternative dispute resolution framework, complementing existing mechanisms such as domestic arbitration and mediation.

This study starts with a short overview of the legal framework for the recognition and enforcement of foreign arbitral awards in Uzbekistan before analysing cases from December 2018 until June 2024 made public on the website of the Supreme Court of the Republic of Uzbekistan. According to statistics, a large share of cases has been considered by Tashkent City Court. As can be seen from the case analysis, Uzbek courts have generally adhered to international standards in this area, with only a few cases being rejected or partially enforced.

2 LEGAL FRAMEWORK

The legal framework governing international commercial arbitration consists of international and national legal acts. In Uzbekistan, domestic and international commercial arbitration are governed by distinct regimes. Domestic arbitration is regulated by the Law "On Arbitration Courts," enacted on 16 October 2006.[2]

2.1. The New York Convention

Uzbekistan joined the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958, "New York Convention") on 22 December 1995, becoming effective from 7 February 1996 without any reservations.[3] Since then, Uzbek courts have been considering applications for recognising and enforcing foreign arbitral awards.

1 Thomas R Snider, Sherzodbek Masadikov and Sergejs Dilevka, 'Uzbekistan Adopts Law on International Commercial Arbitration' (*Kluwer Arbitration Blog*, 24 March 2021) <https://arbitrationblog.kluwerarbitration.com/2021/03/24/uzbekistan-adopts-law-on-international-commercial-arbitration/> accessed 20 September 2024.

2 Law of the Republic of Uzbekistan no LRU-64 "On Arbitration Courts" of 16 October 2006 <https://lex.uz/docs/1072079> accessed 20 September 2024.

3 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (10 June 1958) <https://www.newyorkconvention.org/english> accessed 20 September 2024.

2.2. Regional Conventions

Uzbekistan is a party to several regional conventions on legal assistance within the Commonwealth of Independent States (CIS) that deal with the issues of recognition and enforcement of court judgments.

Among them is the Kyiv Agreement on the Procedure for Resolution of Disputes Related to the Conduct of Economic Activity (Kyiv, 20 March 1992, "Kyiv Agreement")[4], which also deals with the recognition and enforcement of arbitral awards rendered on the territory of participant states. If a foreign arbitral award comes from the CIS, the economic courts may also apply the Kyiv Agreement. There are instances when the economic courts apply the Kyiv Agreement alone[5] or in conjunction with the New York Convention.[6]

The use of the Kyiv Agreement does not, in principle, go against the New York Convention as Article VII (1) of the latter provides that the provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards.

Thus, a party applying for the recognition and enforcement of an arbitral award issued in the CIS can take advantage of both instruments—the New York Convention and the Kyiv Agreement.

2.3. The Law on International Commercial Arbitration

The Law of the Republic of Uzbekistan on International Commercial Arbitration was adopted on 16 February 2021 and entered into force in August 2021.[7] The ICA Law is based on the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 ("the Model Law").[8] Thus, Uzbekistan is placed among 87 States (in a total of 120 jurisdictions) whose legislation is based on or influenced by the

4 Agreement on the Procedure for Resolution of Disputes Related with the Conduct of Economic Activity (Kyiv, 20 March 1992) <https://zakon.rada.gov.ua/laws/show/997_076/#Text> accessed 20 September 2024.
Uzbekistan ratified this Agreement on 6 May 1993.
Termination of the international treaty for Ukraine from 05 February 2023 (based on the Law of Ukraine No. 2855-IX of 12 January 2023).

5 Case no 4-10-1918/35 (Economic Court of Tashkent, 26 March 2019).
All decisions of economic courts are published on the official website of the Supreme Court of the Republic of Uzbekistan, see: 'Decisions of Economic Courts' (*Supreme Court of the Republic of Uzbekistan*, 2024) <https://public.sud.uz/report/ECONOMIC> accessed 20 September 2024.

6 Case no 4-10-2016/60 (Economic Court of Tashkent, 29 May 2020).

7 Law of the Republic of Uzbekistan no ZRU-674 'On International Commercial Arbitration' of 16 February 2021 <https://lex.uz/docs/5698676> accessed 14 February 2024.

8 *UNCITRAL Model Law on International Commercial Arbitration 1985: With amendments as adopted in 2006* (UN 2008) <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration> accessed 20 September 2024.

Model Law.[9] Albeit, a lot should be done in terms of institutional development of arbitration and for Uzbekistan to become a favourable arbitration place internationally.[10]

2.4. Economic Procedure Code

With the adoption of the ICA Law, amendments were introduced to the current legislation of Uzbekistan, including the Economic Procedure Code of the Republic of Uzbekistan ("EPC").[11] Amendments were made to more than 10 articles of the EPC and a new "Chapter 29[1]. Proceedings in cases related to arbitration proceedings" was introduced.[12]

Chapter 33 of the EPC, which deals with the recognition and enforcement of foreign arbitral awards, remained unchanged and, in principle, is in line with the provisions of the ICA Law and the New York Convention. Additionally, this chapter also addresses the recognition and enforcement of foreign court judgments.

3 ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

3.1. International Standards

There is a strong pro-enforcement attitude in the recognition and enforcement of foreign arbitral awards internationally.[13] Article V of the New York Convention sets the grounds for non-enforcement of which Article V(1) grounds can be raised by the party resisting enforcement and Article V(2) grounds by the court itself.[14] These grounds of Article V are exhaustive, should be construed narrowly, and the court may not review the merits of the award.[15] Article V of the New York Convention has served as a

9 'Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006' (*United Nations Commission on International Trade Law*, 2021) <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status> accessed 20 September 2024.

10 Sherzodbek Masadikov, 'Arbitration Legislation of Uzbekistan: Further Development' (2022) 1 Prospects of Development of International Commercial Arbitration in Uzbekistan 38, doi:10.47689/978-9943-7818-6-3/iss1-pp38-41.

11 Economic Procedure Code of the Republic of Uzbekistan no ZRU-461 of 24 January 2018 <https://lex.uz/docs/3523891> accessed 20 September 2024.

12 Law of the Republic of Uzbekistan no LRU-769 of 16 May 2022 'On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Adoption of the Law of the Republic of Uzbekistan "On International Commercial Arbitration"' <https://lex.uz/docs/6017497> accessed 20 September 2024.

13 Gary B Born, *International Commercial Arbitration* (3rd eds, Kluwer Law International 2021) 5806.

14 New York Convention (n 3).

15 Albert Jan van den Berg, *The New York Arbitration Convention of 1958* (TMC Asses Institute 1981) 269.

benchmark in the development of Article 36 of the Model Law[16] and later for Article 52 of Uzbekistan's ICA Law.[17]

3.2. Applications

Articles 51-52 of the ICA Law are devoted to recognising and enforcing arbitral awards and largely follow the Model Law. According to Article 248 of the EPC, an arbitral award may be submitted to the economic court for recognition and enforcement within **three years** from the date of entry into force of the award.

According to Article 249, an application for the recognition and enforcement of an arbitral award must be submitted by the applicant to the regional or Tashkent City Court based on the debtor's location or place of residence, or if the debtor's location or place of residence is unknown, at the place of state registration of the debtor. In the past, the provisions of this article caused some problems in the recognition and enforcement of the arbitral awards against respondents whose place of business was neither located nor registered on the territory of Uzbekistan.[18]

Pursuant to Article 250 of the EPC, the application for recognition and enforcement of an arbitral award is submitted in writing and must be signed by the applicant or his representative. According to Article 254, the application is considered within 6 months, and the court is not entitled to reconsider the case on the merits.[19]

3.3. Grounds for Refusal

Article 256 of the EPC lists grounds for the refusal of the applications on recognition and enforcement, which are similar to that contained in Article 52 of the ICA Law and the New Convention, with two more additional grounds not provided in the latter documents.

Paragraph 6 of Part 1 of Article 256 of the EPC introduces one more ground for refusal, stating "if the dispute was resolved by noncompetent foreign arbitration court", meaning an arbitral tribunal that lacked the jurisdiction to do so. However, under Article 21 of the ICA Law, the arbitration court is entitled to decide on its jurisdiction. Such issue usually arises at the outset of the arbitration proceedings and not at the enforcement stage. Thus, this extra ground should be reconsidered and aligned with the provisions of the ICA Law in the future.

16 UNCITRAL Model Law (n 8).

17 Law of the Republic of Uzbekistan no ZRU-674 (n 7).

18 Yakub Sharipov, 'Enforcement of Arbitral Awards in Uzbekistan: Challenges and Uncertainties' (*Kluwer Arbitration Blog*, 11 November 2019) <https://arbitrationblog.kluwerarbitration.com/2019/11/11/enforcement-of-arbitral-awards-in-uzbekistan-challenges-and-uncertainties/> accessed 20 September 2024.

19 Economic Procedure Code (n 11).

Paragraph 3 of Part 2 of Article 256 of the EPC provides another ground for refusal if the statute of limitation has expired for the enforcement of foreign arbitration award fixed in Article 248 for the period of three years. On this ground, Tashkent City Court rejected an application for the recognition and enforcement of the ICC International Arbitration Court award dated 27 April 2020.[20]

A court ruling on the application of recognition and enforcement of the arbitral award may be appealed in accordance with Article 257 of the EPC.

Regarding the application of Article V of the New York Convention, the Supreme Court provides the following guidance to the courts:

> "refusal to recognise and enforce an arbitral award on the basis of paragraph 1 of Article V of the New York Convention is permissible only if there is evidence justifying the circumstances specified in this paragraph. Refusal to recognise and enforce an arbitral award on the basis of paragraph 2 of Article V of the New York Convention is permissible regardless of the presentation of any evidence to the court."[21]

3.4. Public Order

Uzbek Law does not provide a definition of "public order". However, Article 1164 of the Civil Code of the Republic of Uzbekistan refers to it in a slightly different context, stating that foreign law is not applied in cases where its application would contradict the fundamentals of law and order (public order) of the Republic of Uzbekistan. In these cases, the law of the Republic of Uzbekistan applies. The second part of this article provides some guidance on its application, stating that refusal to apply a foreign law cannot be based solely on the difference between the legal, political or economic system of the relevant foreign state and that of the Republic of Uzbekistan.[22]

As international best practice suggests, "the public policy defence should be applied only if the arbitral award fundamentally has offended the most basic and fundamental principles of justice and fairness in the enforcement State, or evidences intolerable ignorance or corruption on the part of the arbitral tribunal. To refuse to enforce an award on the ground that it violates public policy, the award must either be contrary to the essential morality of the State in question, or disclose errors that affect the fundamental principles of public and economic life."[23]

20 Case no 4-10-2316/655 (Tashkent City Court, 11 December 2023).

21 Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan no 27 of 20 November 2023 'On Some Issues of Application of Legislative Acts When Considering Cases Involving Foreign Persons by Economic Courts', para 66 <https://lex.uz/ru/docs/6686276> accessed 20 September 2024.

22 Civil Code of the Republic of Uzbekistan no 256-I of 29 August 1996 <https://lex.uz/docs/180552> accessed 20 September 2024.

23 UNCITRAL, *UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration* (UN 2012) 183.

The Economic Court follows the international standard of narrowly interpreting public policy at the enforcement stage. In Case No. 4-10-2225/540 dated 2 March 2023,[24] a debtor from Uzbekistan appealed to the Supreme Court against the Tashkent City Court's decision to grant a Russian company's application for the recognition and enforcement of an arbitral award. The award, issued by the Russian Arbitration Center (RAC) at the Russian Institute of Modern Arbitration dated 18 October 2022, ordered the debtor to pay 13,142,317,80 USD, interest of 375,832,21 USD for the use of funds, and an arbitration fee of 71,733,48 USD.

In support of its arguments, the debtor claimed that the applicant's application indicated Gazprombank—an entity subject to US sanctions—as a servicing bank, arguing that enforcing the arbitration award would be contrary to the public order of the Republic of Uzbekistan. However, the Supreme Court, guided by Article III of the New York Convention and Article 256 of the EPC, found that the debtor's argument that sanctions were applied to Gazprombank by the United States was not a basis for refusing recognition and enforcement of the RAC decision. The court determined that recognition and enforcement of the award neither contradicted nor threatened the public order of the Republic of Uzbekistan.[25]

3.5. Enforcement Procedure

The enforcement of an arbitral award is carried out based on a writ of execution issued by the court that rendered a ruling on recognition and enforcement and is subject to immediate execution. The writ of execution is issued to the applicant or, at his request, is sent for the execution to the state executor within five days after the judicial act enters into force.[26]

Pursuant to Article 338 of the EPC and Article 6 of the Law of the Republic of Uzbekistan "On the Execution of Judicial Acts and Acts of Other Bodies,"[27] such a writ of execution may be presented for enforcement within **three years** from the date the judicial act becomes final. As per the Resolution of the Supreme Court, it is stipulated that the writ of execution issued based on a ruling on the recognition and enforcement of an arbitral award must indicate the date of entry into force.[28] The writ of execution must be considered by the state executor within a period not exceeding two months.[29]

3.6. A Domestic Arbitral Award?

According to the provisions of laws discussed below, an arbitral award rendered on the territory of Uzbekistan is not considered a domestic arbitral award but an international arbitral award and, therefore, is recognised and enforced in the manner described above.

24 Case no 4-10-2225/540 (Supreme Court, 2 March 2023).
25 Case No. 4-14-2203/2 involving public policy issues is also considered below.
26 Economic Procedure Code (n 11) art 336.
27 Law of the Republic of Uzbekistan no 258-II of 29 August 2001 'On the Execution of Judicial Acts and Acts of Other Bodies' <https://lex.uz/docs/13896> accessed 20 September 2024.
28 Resolution of the Plenum of the Supreme Court no 27 (n 21) para 64.
29 Law of the Republic of Uzbekistan no 258-II (n 27) art 30.

3.7. Challenge of the Award

Article 50 of the ICA Law follows Article 34 of the Model Law with a **three-month time limit** for challenging an arbitral award from the date it is received by the parties. The article also expresses that the court is not entitled to reconsider the case on its merits. The grounds for refusal are similar to that of Article 52 of the ICA Law.

4 CASE ANALYSIS

This case analysis is based on the recognition and enforcement of foreign arbitral awards by the economic courts of the Republic of Uzbekistan, based on cases retrieved from the Supreme Court's database.[30] The retrieval of cases from the database has been complicated as cases under this category are mixed with other cases related to the recognition and enforcement of foreign court judgments. The case analysis covers the period from December 2018, when the courts started to report and upload cases, up until June 2024.

4.1. Case Statistics

Out of 259 cases reported under Chapter 33 of the EPC, 78 cases were on recognition and enforcement of foreign arbitral awards, of which six were rejected, 18 were appealed to the Supreme Court and consequently recognised and enforced, with 1 case partially enforced. Nearly half of the cases (33) were considered by the Tashkent City Court. As the case statistics above show, the economic courts, in most instances, recognise and enforce foreign arbitral awards unless any irregularities, provided in Article V of the New York Convention or the EPC, are detected.

4.2. Appealed Cases to the Supreme Court

The following cases demonstrate the Supreme Court's pro-enforcement approach and narrow interpretation of the grounds for non-enforcement as practised in the developed arbitration jurisdictions.

In four cases that involved the same parties—an applicant from Kazakhstan and a respondent—Uzbek company argued that the arbitration court violated substantive and procedural laws and that the dispute was resolved by an arbitration court which did not have jurisdiction.[31] The Supreme Court, applying Articles III, V and VII of the New York

30 *Supreme Court of the Republic of Uzbekistan* <https://public.sud.uz/report/ECONOMIC> accessed 20 September 2024.

31 Case no 4-10-1809/177 (Supreme Court, 28 June 2019); Case no 4-10-1816/123 (Supreme Court, 28 June 2019); Case no 4-10-1816/243 (Supreme Court, 28 June 2019); Case no 4-10-1818/237 (Supreme Court, 28 June 2019).

Convention and Article 8 of the Kyiv Agreement, reaffirmed decisions of the appellate instance on the recognition and enforcement of the arbitral award of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC).

In Case No. 4-14-1906/9, dated 10 July 2019,[32] the debtor from Uzbekistan argued that he had not been properly notified about the appointment of an arbitrator or the arbitration proceedings and, therefore, could not submit his objections to the claim. However, the court stated that from the materials of the case, the debtor applied to the ICAC with a letter requesting that the arbitration proceedings be conducted via videoconferencing, which was not contested by the debtor's representative at the court hearing. Further, the court found that the notice of the time and place of the arbitration proceedings had been sent to the debtor by the DHL[33] postal service, and the notice indicated that the debtor had refused to accept it. The Supreme Court, applying Articles III and V of the New York Convention, reaffirmed decisions of the appellate instance on the recognition and enforcement of the arbitral award of the ICAC.

In Case No. 4-12-2105/13, dated 9 November 2021,[34] the Lithuanian applicant appealed the ruling of the regional economic court, which had suspended the case concerning the enforcement of the Vilnius Court of Commercial Arbitration's against the respondent located in Uzbekistan. The contract between the parties concluded in 2019, referred disputes to the Arbitration Court at the Chamber of Commerce and Industry of Lithuania, which in 2003 merged with the Vilnius International Commercial Arbitration to form the Vilnius Court of Commercial Arbitration (VCCA). The regional court sent a letter inquiring about this and suspended the case. Despite the applicant submitting information regarding this issue, the regional court disregarded it. The respondent argued that the dispute had been handled by an arbitration court that did not have jurisdiction and requested that the Supreme Court reject the appeal. The Supreme Court annulled the ruling of the regional court and affirmed the applicant's appeal.

In Case No. 4-17-2103/5, dated 9 December 2021,[35] the debtor from Uzbekistan argued that he had not been duly notified about the time and place of the arbitration hearing. The applicant's application to stay in the court proceedings to submit additional evidence was rejected, and the recognition and enforcement application was also denied. Subsequently, the applicant obtained evidence proving that the debtor had been duly notified and appealed the decision of the first instance court to the Supreme Court (appellate instance), which ruled in favour of the applicant on 10 June 2021. The debtor then filed the cassation complaint with the Supreme Court, which, on 9 December 2021, found that the debtor was duly notified. The court rejected the complaint and reaffirmed the appellate court's decision.

32 Case no 4-14-1906/9 (Supreme Court, 10 July 2019).
33 International courier service company.
34 Case no 4-12-2105/13 (Supreme Court, 9 November 2021).
35 Case no 4-17-2103/5 (Supreme Court, 9 December 2021).

In Case No. 4-10-2111/382, dated 25 January 2022,[36] a debtor from Uzbekistan appealed the decision of the regional economic court on the recognition and enforcement of the arbitral award of the Riga International Arbitration Court. The Supreme Court, applying provisions of the New York Convention and the EPC, rejected the appeal and reaffirmed the decision of the lower court. This case is important for several points as the Supreme Court reiterated: (a) the rule that an arbitral award should not be reviewed on its merits; (b) the competence-competence principle in combination with validation principle[37] of the arbitration agreement; (c) the narrow interpretation of public policy ground; and (d) the separability of the arbitration agreement.

In Case No. 4-10-2209/542, dated 20 July 2023,[38] the Supreme Court examined a cassation complaint filed by a debtor—a local pharmaceutical company—against the recognition and enforcement of the award from the Vienna International Arbitral Centre, rendered on 21 March 2022, in favour of a Czech company for the amount of €1,237,470,95 with interest. At the time the Czech company applied for the recognition and enforcement of the award at Tashkent City Court, the interest on the unpaid debt had reached €390,192,41.

The dispute arose from four contracts between the parties, three of which were for the sale of pharmaceutical products and one for services. The debtor raised several arguments, including:

a) the disputes and differences related to the contracts were not contemplated in the arbitration agreement, and therefore, the arbitral tribunal had considered matters beyond its competence;
b) the arbitral tribunal lacked jurisdiction to consider the claim related to the recovery of interest on the unpaid debt, as the contracts did not specify the payment of interest;
c) the debtor was deprived of its right to be heard;
d) there was bias from the side of the arbitral tribunal in examining witnesses, which the debtor argued was contrary to public order.

The Supreme Court dismissed the cassation complaint on all grounds and reinstated the decisions of lower instance courts. In doing so, the Supreme Court reconsidered the arbitral award extensively to substantiate its decision despite acknowledging that the court is not entitled to reconsider the arbitral award on its merits.

The Supreme Court noted that if there were doubts about the arbitrator's bias in considering the case, the debtor should have used his right to challenge the arbitrator. However, the debtor did not use this right or raise objections during the arbitration proceedings.

36 Case no 4-10-2111/382 (Supreme Court, 25 January 2022).

37 *Sulamérica Cia Nacional De Seguros and others v Enesa Engenharia and others* Case no A3/2012/0249 (England and Wales Court of Appeal (Civil Division), 16 May 2012) <http://www.bailii.org/ew/cases/EWCA/Civ/2012/638.html> accessed 20 September 2024.

38 Case no 4-10-2209/542 (Supreme Court, 20 July 2023).

Regarding the arguments on the interest, the Supreme Court cited the Procedural Order No. 2 of the arbitration court dated 23 April 2021, which specified that the Convention on Contracts for the International Sale of Goods (Vienna, 1980) would be the applicable law, as both the Republic of Uzbekistan and the Czech Republic were parties to the Convention. It further stated that matters not regulated by the Convention would be resolved by the legislation of the Czech Republic, and the Czech Republic would apply to the service contract. The Supreme Court also referred to Article 78 of the Convention, which provides that if a party fails to pay the price or any other sum in arrears, the other party is entitled to interest on it. Based on these provisions, the Supreme Court concluded that the debtor's arguments against the award of interest were groundless.

This case raises issues related to the competence and jurisdiction of the arbitral tribunal, due process violations, and public policy grounds for non-enforcement. However, the Supreme Court interpreted these issues narrowly, evidencing a pro-enforcement approach.

In Case No. 4-10-2225/556, dated 17 October 2023,[39] a local pharmaceutical company, the debtor, argued against the enforcement of an arbitral award issued by the Vienna International Arbitral Centre on the grounds that: (a) it was not duly notified about the time and place of the arbitration proceedings; (b) the arbitration process did not comply with the agreement of the parties and the law of the country where the arbitration took place; (c) the arbitral award violated the public order of the Republic of Uzbekistan due to misapplication from the side of the arbitral tribunal of the substantive law of the Czech Republic; and (d) the arbitral tribunal ignored the limitations on liability measures that had been agreed upon and approved by the applicant and the debtor.

The Supreme Court dismissed the cassation complaint of the debtor and reinstated the ruling of the Tashkent City Court. The Court stated that the debtor had failed to provide the court with sufficient evidence to support his arguments. In contrast, the applicant presented evidence demonstrating that the debtor was properly notified of the appointment of an arbitrator and the arbitration proceedings. The Court also noted that the debtor had the opportunity to present his explanations to the arbitration court, and the arbitration proceedings were conducted in accordance with the arbitration rules. The dispute was covered by the arbitration clause, and the arbitral award was made in accordance with those terms.

Furthermore, the Supreme Court referenced Article 606(6) of the Civil Procedure Code of Austria and concluded that the recognition and enforcement of the award did not contradict or threaten the public order of the Republic of Uzbekistan.

39 Case no 4-10-2225/556 (Supreme Court, 17 October 2023).

4.3. Rejected Cases

In Case No. 4-11-1912/222, dated 7 June 2019,[40], a Danish company applied for the recognition and enforcement of the award of the ICC International Court of Arbitration against a Spanish company.[41] However, Tashkent City Court rejected the application, reasoning that the applicant failed to provide evidence of the debtor's property located on the territory of Uzbekistan. The Court also found that the Arbitration Court had not awarded damages for the applicant to collect from the debtor.

Under Article V of the New York Convention, there are no grounds for rejection based on the failure to locate a debtor's property in the jurisdiction where enforcement is sought. On the other hand, Article III of the New York Convention allows recognition and enforcement "in accordance with the rules of procedure of the territory where the award is relied upon". However, the Court did not cite any relevant articles of the EPC to substantiate its decision. A more appropriate reference would have been Article 239 of the EPC, which states:

> The economic courts of the Republic of Uzbekistan are authorised to consider cases on disputes arising in the economic sphere, with the participation of foreign organisations, international organisations, foreign citizens, or stateless persons, if:
>
> 1) the respondent is located or resides on the territory of the Republic of Uzbekistan or there is property of the respondent on the territory of the Republic of Uzbekistan.

The Court's findings that the arbitral award did not deal with the award of damages in favour of the applicant warrants further consideration. If the Arbitration Court had not ordered damages in favour of the applicant, then logically, the applicant would not have the right to request recognition and enforcement of the award specifically for this effect. Apart from this, the Court should not have rejected the application on the grounds not provided in Article V of the New York Convention.

In Case No. 4-10-2018/381, dated 24 March 2021,[42] Tashkent Regional Court rejected the application of a Russian company seeking recognition and enforcement of an ICAC award against a debtor located in Uzbekistan on the grounds that the debtor was not duly notified about the arbitration proceedings. The applicant had submitted evidence proving that the statement of claim was duly received by the debtor. However, the debtor's representative argued that the person who had received the documents did not work for the debtor's company. The Court stated that a notification addressed to a legal entity is served on a person authorised to receive correspondence, and in this case, the applicant did not provide the court with the evidence that the person who received the mail was authorised to do so.

40 Case no 4-11-1912/222 (Economic Court of Tashkent, 7 June 2019).

41 This Case was also discussed by Sharipov (n 18).

42 Case no 4-10-2018/381 (Economic Court of Tashkent Region, 24 March 2021).

The applicant submitted letters from the courier service, according to which the arbitration case materials were sent by the arbitration court to the legal address of the debtor. However, the courier service was unable to complete the delivery because there was no response to phone calls, and the organisation could not be reached at the address. The Court found that according to the note from the State Registry, the debtor was listed in the list of operating enterprises with a definite legal address. The Court concluded that no documents were submitted confirming the absence of the organisation at the address. Applying the rules of the EPC, local postal service regulations, and Article V of the New York Convention, the Court found that the debtor was not duly notified about the arbitration proceedings.

In Case No. 4-18-2204/14, dated 5 October 2022,[43] the Supreme Court reaffirmed the decision of the regional court that rejected recognition and enforcement of the arbitral award rendered in Kazakhstan for failing to submit an arbitration agreement or its certified copy under Article 252 of the EPC that provides:

> An application for recognition and enforcement of a foreign arbitration award, unless otherwise provided by an international treaty of the Republic of Uzbekistan, shall be accompanied by:
>
> 1) an award of a foreign arbitration or a copy thereof, certified by the competent authority of a foreign state or the Republic of Uzbekistan.

In Case No. 4-10-2304/528, dated 22 December 2023,[44] the Appellate instance of the Supreme Court found that a debtor was not duly notified about the appointment of an arbitrator and the arbitral proceedings and rejected the application based on Article V(1)(b) of the New York Convention and Article 256 of the EPC. Such grounds account for the breach of due process, and the application was rightly rejected,

4.4. Returned Cases

In Case No. 4-11-2207/117, dated 29 December 2022,[45] Tashkent Regional Court returned an application for the recognition and enforcement of the ICAC award on the grounds that a debtor was not duly notified about the time and place of the consideration of the case.

4.5. Partial Enforcement

Under Article V(1)(c) of the New York Convention, partial enforcement of the arbitral award is possible, which corresponds to Article 52(1) of the ICA Law.

In Case No. 4-14-2203/2, dated 11 October 2022,[46] an applicant from Kazakhstan applied for the regional court to recognise and enforce the ICAC arbitral award to recover

43 Case no 4-18-2204/14 (Supreme Court, 5 October 2022).
44 Case no 4-10-2304/528 (Supreme Court, 22 December 2023).
45 Case no 4-11-2207/117 (Tashkent Regional Court, 29 December 2022).
46 Case no 4-14-2203/2 (Supreme Court, 11 October 2022).

€1,288,609,37 in damages, a fine of €472,061,31 an arbitration registration fee of 48,491 USD, and a fine of 0.1% of the goods' value for each day of late delivery starting from 12 March 2021 until the actual performance of the obligation.

The regional court initially ruled on 28 January 2022 that the award should be recognised and enforced. However, on appeal, the Supreme Court modified the ruling on 18 August 2022 by rejecting the enforcement of a fine of 0.1% of the value of the goods for each day of late delivery from 12 March 2021 until the actual performance of the obligation.

The respondent filed a cassation complaint with the Supreme Court, requesting the annulment of the decisions made by both the first instance and appellate courts. The Supreme Court, on 11 October 2022, reaffirmed the ruling of the first instance court, finding that partial enforcement was allowed under the EPC, but it upheld the appellate court's decision to reject enforcement of the fine of 0,1 %.

In this case, the appellate court's re-examination of the arbitral award runs against the provisions of the New York Convention, the ICA Law and EPC, as well as the international pro-enforcement approach.

5 CONCLUSION

This analysis of Uzbek court decisions on the recognition and enforcement of foreign arbitral awards from December 2018 to June 2024 has led to key findings and conclusions. While minor oversights were observed at the first-instance court level, economic courts generally followed international standards of a pro-enforcement approach and narrowly interpreted the grounds for refusing the applications for recognition and enforcement.

In most cases, the Supreme Court of Uzbekistan demonstrated its commitment to follow best international practices in the recognition and enforcement of foreign arbitral awards. The economic courts narrowly interpreted the public policy ground, which is in line with international standards. With the exception of a minor deviation in one case discussed above, all other rejected cases were well-grounded by the courts for due process violations. However, a partially enforced case involving the award of interest, where the court re-examined the arbitral award, was against established international standards.

Thus, besides a few instances of rejection or re-examination, Uzbek courts have correctly recognised and enforced foreign arbitral awards. To prevent errors and ensure consistency, it would be beneficial for the Plenum of the Supreme Court of Uzbekistan to adopt a specialised resolution providing clear guidance on correctly applying international and national rules. This resolution should also deal with the issues related to public policy in detail. In this regard, the findings and conclusions of this research could be used to improve Uzbek court practice in the field further.

REFERENCES

1. Berg AJ, *The New York Arbitration Convention of 1958* (TMC Asses Institute 1981).
2. Born GB, *International Commercial Arbitration* (3rd eds, Kluwer Law International 2021).
3. Masadikov S, 'Arbitration Legislation of Uzbekistan: Further Development' (2022) 1 Prospects of Development of International Commercial Arbitration in Uzbekistan 38, doi:10.47689/978-9943-7818-6-3/iss1-pp38-41.
4. Sharipov Ya, 'Enforcement of Arbitral Awards in Uzbekistan: Challenges and Uncertainties' (*Kluwer Arbitration Blog*, 11 November 2019) <https://arbitrationblog.kluwerarbitration.com/2019/11/11/enforcement-of-arbitral-awards-in-uzbekistan-challenges-and-uncertainties/> accessed 20 September 2024.
5. Snider TR, Masadikov S and Dilevka S, 'Uzbekistan Adopts Law on International Commercial Arbitration' (*Kluwer Arbitration Blog*, 24 March 2021) <https://arbitrationblog.kluwerarbitration.com/2021/03/24/uzbekistan-adopts-law-on-international-commercial-arbitration/> accessed 20 September 2024.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Оглядова стаття

ВИЗНАННЯ ТА ВИКОНАННЯ ІНОЗЕМНИХ АРБІТРАЖНИХ РІШЕНЬ В УЗБЕКИСТАНІ

Шерзодбек Масадіков

АНОТАЦІЯ

Вступ. *Визнання та виконання іноземних арбітражних рішень відображає бізнес-клімат певної країни. Іноземні інвестори та підприємства уважно стежать за тим, чи відповідають ці процеси встановленим міжнародним стандартам, оскільки вони можуть вплинути на їхній бізнес. Бізнес-спільнота надає пріоритет ефективному вирішенню спорів і процедурам примусового виконання. Таким чином, для Узбекистану розв'язання цього питання є важливим не лише для покращення бізнес-клімату та залучення іноземних інвестицій, але й з погляду забезпечення доступу до правосуддя.*

Методи. *Це дослідження ґрунтується на первинних даних, зібраних із судових рішень про визнання та виконання іноземних арбітражних рішень в Узбекистані. У роботі використовуються як якісні, так і кількісні методи дослідження. Потім ці рішення проходять юридичну перевірку для оцінки їх відповідності міжнародним стандартам із застосуванням порівняльно-правового аналізу. У статті автори також спираються на відповідні дослідження у сфері права та міжнародну судову практику.*

Результати та висновки. *Висновки були зроблені за допомогою аналізу рішень судів Узбекистану про визнання та виконання іноземних арбітражних рішень з грудня 2018 року по червень 2024 року. У той час як на рівні судів першої інстанції спостерігалися незначні порушення, господарські суди дотримувалися міжнародних стандартів виконавчого підходу та вузького тлумачення підстав для відмови у задоволенні заяв про визнання та виконання. Здебільшого Верховний суд Узбекистану продемонстрував прагнення відповідати кращим міжнародним практикам у цій сфері. Крім того, господарські суди тлумачать публічний порядок вузько, що відповідає міжнародним стандартам.*

Ключові слова: *визнання, виконання, іноземне арбітражне рішення, публічний порядок, Узбекистан.*