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Introduction

This compilation of abstracts forms part of the system for collecting and disseminating information on Court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). The purpose is to facilitate the uniform interpretation of these legal texts by reference to international norms, which are consistent with the international character of the texts, as opposed to strictly domestic legal concepts and tradition. More complete information about the features of the system and its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/REV.1). CLOUT documents are available on the UNCITRAL website: (www.uncitral.org/clout/showSearchDocument.do).

Each CLOUT issue includes a table of contents on the first page that lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted or referred to by the Court or arbitral tribunal. The Internet address (URL) of the full text of the decisions in their original language is included, along with Internet addresses of translations in official United Nations language(s), where available, in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement of that website by the United Nations or by UNCITRAL; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Abstracts on cases interpreting the UNCITRAL Model Arbitration Law include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents. Abstracts on cases interpreting the UNCITRAL Model Law on Cross-Border Insolvency also include keyword references. The abstracts are searchable on the database available through the UNCITRAL website by reference to all key identifying features, i.e. country, legislative text, CLOUT case number, CLOUT issue number, decision date or a combination of any of these.

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**Cases relating to the Convention on the Recognition and Enforcement of
Foreign Arbitral Awards — The “New York” Convention**

Case 1140: New York Convention V (1)(e)

Russian Federation: Presidium of the Supreme Commercial Court of the Russian Federation

Decision No. 6547/10

5 October 2010

Original in Russian

Published in Russian: Bulletin of the Supreme Commercial Court of the Russian Federation, 2011, No. 1; online database of court decisions <http://ras.arbitr.ru>

Abstract prepared by A. S. Komarov, National Correspondent, A. I. Muranov and N. S. Karetnaya

Following the refusal of a Russian defendant to comply voluntarily with an award by the Arbitration Institute of the Stockholm Chamber of Commerce relating to the advance payment of its share of the arbitration fee for initiated arbitration proceedings, a Swedish plaintiff applied to the competent Russian court for the recognition and enforcement of the arbitral award in question.

The court granted the plaintiff's application. A higher court upheld that decision, concurring with the conclusion that neither international law nor the legislation of the Russian Federation limited the possibility of recognition and enforcement of foreign arbitral awards to awards on the merits of a dispute.

The Russian company lodged an appeal with the Supreme Commercial Court of the Russian Federation, which set aside the decisions of the lower courts on the following grounds. According to article 31 of the Law of the Russian Federation on International Commercial Arbitration, an arbitral award is an instrument that states a conclusion regarding the satisfaction or rejection of a legal claim, the amount of the arbitration fee and of the costs relating to the case in question and the apportioning of those fees and costs between the parties. Unlike other instruments adopted by the arbitral tribunal, arbitral awards conclude the examination of a case either in its entirety or with respect to those matters submitted to arbitration.

In the case in question, the arbitral award relating to the obligation of the Russian defendant to compensate the Swedish plaintiff for the advance payment of arbitration fees made on its behalf had been issued as a separate award. Article V (1)(e) of the New York Convention provides that the recognition and enforcement of an arbitral award may be refused at the request of the party against which it is invoked if that party furnishes to the competent authority where the recognition and enforcement is being sought proof that the award has not yet become binding on the parties.

According to the case materials, the separate arbitral award was an interim instrument issued by a foreign arbitral tribunal, invoked to guarantee payment of the anticipated expenses by the parties to the arbitral tribunal prior to the examination of the dispute. According to the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, the final apportionment of arbitration expenses between the parties to arbitration proceedings is determined by that Institute. There

was no evidence in the case materials to indicate that the Institute had issued such a decision.

Consequently, a systematic interpretation of the provisions of Russian law and article V (1)(e) of the New York Convention confirmed that only arbitral awards made on the basis of examination by a tribunal of the merits of a dispute and issued on completion of all arbitration procedures were subject to enforcement. Those provisions did not, therefore, apply to interim arbitral awards, including awards made by arbitrators in relation to other procedural issues (such as the collection of court fees, establishment of jurisdiction and adoption of interim measures). Such awards were not subject to enforcement in the territory of the Russian Federation.

Case 1141: New York Convention II (3)

Russian Federation: Moscow Area Federal Arbitration Court

Decision No. KG-A40/13192-08

29 January 2009

Original in Russian

Published in Russian: online database of court decisions <http://ras.arbitr.ru>

Abstract prepared by A. S. Komarov, National Correspondent, A. I. Muranov and N. S. Karetnaya

An Israeli company applied to the competent Russian court against a Russian organization (hereinafter the defendant) to terminate an agreement concluded between them and to collect debts owed by the Russian organization for work carried out under that agreement. The defendant objected to court proceedings on the grounds that the parties had concluded an arbitration agreement.

Since the courts of first and second instance dismissed the plaintiff's claim on the grounds that the parties had agreed that the dispute in question should be examined by an arbitration tribunal, that that agreement had not been found to be invalid and that the possibility of enforcement of the agreement by the courts had not been precluded, the plaintiff lodged an appeal with a higher court. The plaintiff based its application on the fact that the dispute fell exclusively within the jurisdiction of the State courts since it related to the property of the defendant, which constituted property of the Russian Federation and had been transferred to the administration of the defendant.

The higher court, citing article II of the New York Convention, found that the lower courts had rightly ruled that the arbitration agreement concluded by the parties was in accordance with legislation in force and was subject to enforcement. The court also ruled that the plaintiff's argument regarding the exclusive jurisdiction of the Russian State courts was based on an incorrect interpretation of the rules of procedure of the Russian Federation. Those rules did not provide for the exclusion from the jurisdiction of arbitration tribunals of disputes relating to the fulfilment of obligations, including the collection of debts owed for work carried out under an agreement in relation to property in the possession of the defendant.

Case 1142: New York Convention V (1)(c), V (2)(b)

Russian Federation: Civil Chamber of the Supreme Court of the Russian Federation

Ruling No. 5-G02-23

2 April 2002

Original in Russian

Published in Russian: online legal databases “ConsultantPlus” (www.consultant.ru)

and “Garant” (www.garant.ru)

Abstract prepared by A. S. Komarov, National Correspondent, A. I. Muranov and N. S. Karetnaya

A Swiss company applied to a Russian court for the recognition and enforcement of an arbitral award by the Geneva Chamber of Commerce, Industry and Services relating to the collection of a sum of money from a Russian company in accordance with the terms of an agreement concerning the sale and purchase of diesel fuel. That application was granted.

The Russian company appealed to a higher court to set aside that ruling on the grounds that, unlike its counterparty, it had fulfilled its obligation to seek a mutually acceptable settlement in writing in the event of a dispute arising from its agreement with the Swiss company. That proved a breach of the terms of the arbitration clause on the part of the Swiss company, from which it followed that those terms had also been breached when the arbitral award was made in that the award dealt with a dispute that was not covered by the terms of the arbitration clause. The Russian company also asserted that the enforcement of the arbitral award was contrary to the public policy of the Russian Federation.

The higher court upheld the ruling of the court of first instance on the basis of the following conclusion, citing articles V (1)(c) and (2)(b) of the New York Convention.

The agreement provided that, in the event that the parties were unable to reach a mutually acceptable decision, the dispute would be referred to a mediator. That mediator must be chosen by the Chamber of Commerce, Industry and Services with the mutual agreement of the parties. If such mediation did not result in a written settlement of the dispute within two months of the appointment of the mediator, the dispute would be definitively settled in accordance with the arbitration rules of the Geneva Chamber of Commerce, Industry and Services.

Since the dispute between the parties had resulted from the failure of one party to fulfil its obligations under the agreement, that dispute was subject to arbitration by the Geneva Chamber of Commerce, Industry and Services. Verification of the fulfilment by the Russian company and the non-fulfilment by the Swiss company of their obligation to seek a mutually acceptable settlement in writing in the event of a dispute could not be regarded as grounds to refuse the enforcement of the arbitral award, since that circumstance did not relate to the arbitration agreement. The arbitration agreement contained only the agreement by the parties to submit to arbitration all or certain disputes that had arisen or that might arise between them in respect of a defined legal relationship. Moreover, the arbitral award was not contrary to the public policy of the Russian Federation, which was to be understood as the basis of law and order in that country, enshrined notably in the fundamental principles of the Constitution and other laws of the Russian Federation. Principles

of private law enshrined in separate articles of the Civil Code of the Russian Federation could not be regarded as forming part of that basis.

Case 1143: New York Convention, article V (1)(c)

Russian Federation: Federal Arbitration Court for the Volga-Vyatka Area

Decision No. 07-20

1 March 2001

Original in Russian

Published in Russian: online legal databases “ConsultantPlus” (www.consultant.ru) and “Garant” (www.garant.ru)

Abstract prepared by A. S. Komarov, National Correspondent, A. I. Muranov and N. S. Karetnaya

A firm (i.e. the plaintiff) registered in the British Virgin Islands applied to a court for the recognition and enforcement in the Russian Federation of an award by the Arbitration Court attached to the Economic Chamber and Agricultural Chamber of the Czech Republic against a Russian organization (i.e. the buyer or the defendant). The award provided that the defendant was obliged to transfer its shares to the firm, register that transfer, pay out a sum of money plus interest and cover the arbitration fees.

The court of first instance established that a contract had been concluded between the parties for the supply of an aeroplane and spare parts. It had been agreed that the Russian buyer would pay for the received aeroplane by carrying out major repairs on a specified number of engines. In reality, the buyer repaired fewer engines than agreed. The parties signed an additional agreement, in accordance with which the buyer was obliged to transfer its shares to the foreign firm as compensation for the repairs that had not been carried out. The parties subsequently agreed to sign an addendum to the contract relating to the leasing of the plane, in accordance with which the buyer was obliged to transfer its shares to the firm. The court came to the conclusion that it was from those agreements that the obligation to transfer the shares arose.

On the basis of article V (1) of the New York Convention, the court found that the arbitration clause in the contract between the plaintiff and the defendant only concerned binding relations in so far as the sale and purchase of the aeroplane was concerned, and did not pertain to the relations between the parties as regarded the transfer of shares. The court therefore granted the application only with respect to the collection of part of the sum of money claimed, plus interest, and otherwise refused to recognize the arbitral award.

The plaintiff appealed against that ruling before a higher court on the grounds that the lower court had applied article V of the New York Convention incorrectly. Specifically, it argued that the addenda to the contract had established a means to ensure that any unfulfilled obligations on the part of the debtor with regard to payment for the supplied aeroplane were settled: in order to compensate for any repairs not carried out, the debtor was obliged to transfer its shares. Those addenda to the contract were not separate agreements between the parties, but simply modified and clarified the terms of the previously concluded agreement.

The higher court upheld the ruling of the court of first instance, since it concurred with the view that the part of the arbitral award dealing with the transfer of shares concerned a dispute that was beyond the scope of the arbitration clause. Citing article V (1)(c) of the New York Convention, the court also ruled that there was no proof of the existence of an arbitration clause establishing the procedure for the settlement of disputes relating to legal relations in respect of leasing.

Case 1144: New York Convention, article V (2)(b)

Russian Federation: Civil Chamber of the Supreme Court of the Russian Federation

Ruling No. 34-G02-2

4 March 2002

Original in Russian

Published in Russian: online legal databases “ConsultantPlus” (www.consultant.ru) and “Garant” (www.garant.ru)

Abstract prepared by A. S. Komarov, National Correspondent, A. I. Muranov and N. S. Karetnaya

A United States corporation applied to a court for the recognition and enforcement of an award by the Arbitration Institute of the Stockholm Chamber of Commerce relating to the collection from the Russian party of damages in connection with the unilateral termination of a contract, and for arbitration expenses.

The Russian defendant requested the dismissal of that application on the grounds that the recognition and enforcement of the arbitral award was contrary to the public policy of the Russian Federation. The court of first instance refused to enforce the arbitral award, on the following grounds. The concluded contract related to sport fishing, and the management of valuable natural resources (fish) was a matter of State public interest. The dispute examined by the court of arbitration was therefore beyond the scope of private relations and was incompatible with the principles of the economic system of the Russian Federation. Consequently, the award made by that court could not be enforced within the territory of the Russian Federation.

The United States corporation appealed to a higher court to overturn the ruling of the court of first instance and terminate the proceedings, since an earlier ruling made by the same court had authorized the enforcement of the arbitral award in question within the territory of the Russian Federation.

The higher court found that it could not concur with the arguments of the court of first instance, since they related to the subject of the dispute and concerned the nature of a contentious legal relationship. Furthermore, recognition and enforcement of the award may be refused at the request of the party against whom it is invoked only if that party furnishes to the competent authority where the recognition and enforcement is sought proof of the grounds listed under article V of the New York Convention. In the absence of that proof, the ruling of the court of first instance could not be recognized as valid and must be set aside.

Case 1145: New York Convention V

Russian Federation: Civil Chamber of the Supreme Court of the Russian Federation

Ruling No. 34-G01-9

22 November 2001

Original in Russian

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and “Garant” (www.garant.ru)

Abstract prepared by A. S. Komarov, National Correspondent, A. I. Muranov and N. S. Karetnaya

A Russian court authorized the enforcement, on the territory of the Russian Federation, of an award made by the Arbitration Institute of the Stockholm Chamber of Commerce in favour of a United States corporation for the collection from a Russian defendant of damages relating to the unilateral termination of a contract, and for arbitration costs.

The Russian defendant filed an application for the review of that ruling in the light of new evidence. The Russian party justified the application on the grounds that new evidence that was of importance in the case but that was not and could not have been known to the applicant at the time of enforcement of the foreign arbitral award had come to light. Specifically, the contract on the basis of which the arbitral award had been made and the arbitration clause set out in that contract had been recognized as invalid by another Russian court. Furthermore, it had been found by the courts that the contract had violated certain provisions of environmental legislation of the Russian Federation in force at the time of conclusion of the contract and that the Russian party had not had the authority necessary to conclude the contract.

The court of first instance refused to grant the request. The Russian party filed a complaint before a higher court. The higher court upheld the ruling of the court of first instance on the following grounds.

According to Russian procedural law, newly revealed evidence should exist at the time of court proceedings. The subject of the arbitral proceedings in Stockholm was breach of the sport fishing contract concluded between the plaintiff and the defendant. That contract and the arbitration clause it contained were recognized as invalid several years after the arbitral award was made in 1996. The argument that that evidence had existed at the time of examination of the case but was not known to the court could not be accepted, since the decisions had been issued and had entered into force only in 2001. Consequently, those court decisions could not be treated as new evidence.

The arguments of the Russian party that the arbitral award dealt with a difference not contemplated by or not falling within the terms of the submission to arbitration, and that the recognition and enforcement of the award was contrary to the public policy of the Russian Federation, were invalid since, in accordance with article V of the New York Convention, the existence of those circumstances may constitute grounds for refusal to recognize and enforce an arbitral award but not for the review of a court decision in the light of new evidence.

Case 1146: New York Convention II(3)

Russian Federation: Federal Arbitration Court for the North-West Area

Decision No. A42-4143/99-13

22 December 1999

Original in Russian

Published in Russian: online legal databases “ConsultantPlus” (www.consultant.ru) and “Garant” (www.garant.ru)

Abstract prepared by A. S. Komarov, National Correspondent, A. I. Muranov and N. S. Karetnaya

A Russian plaintiff applied to a Russian court with a claim against a United States corporation (i.e. the respondent) for recognition of the non-validity of the contract concluded between them, which related to sport fishing. The corporation filed an objection to the examination of the case by that court on the grounds that the contract contained an arbitration clause, and filed a request for the case to be transferred to a court of arbitration in Stockholm, Sweden.

The court dismissed the claim on the grounds that the contract contained an arbitration clause. The court of second instance also dismissed the claim submitted by the Russian party. A higher court rejected the decisions of the lower courts and the case was referred to the court of first instance for examination on the merits.

That decision was based on the following considerations.

The contract contained an arbitration clause to the effect that any dispute arising from that contract should be examined by an “arbitral tribunal of the city of Stockholm, Sweden”. However, there is no arbitral tribunal in Stockholm, and the contract did not contain any further information specifying the name of the international arbitral tribunal to which the parties referred. The respondent did not elaborate on the clause, since it had requested the referral of the dispute to a non-existent arbitral tribunal in Stockholm, Sweden, and the plaintiff was likewise unable to clarify the clause.

On that basis, the court considered that the arbitration agreement could not be performed by the parties and that, in view of that fact, the question of which court was competent to settle the dispute arising from the contract should be decided in accordance with article II (3) of the New York Convention, i.e., the lower courts should examine the action.

Case 1147: New York Convention V(1)(e)

Russian Federation: Civil Chamber of the Supreme Court of the Russian Federation

Ruling No. 34-G97-8

10 November 1997

Original in Russian

Published in Russian: online legal databases “ConsultantPlus” (www.consultant.ru) and “Garant” (www.garant.ru)

Abstract prepared by A. S. Komarov, National Correspondent, A. I. Muranov and N. S. Karetnaya

A United States corporation applied to the competent court of the Russian Federation for the recognition and enforcement of an award made by a court of

arbitration in Sweden (Stockholm) relating to the collection from a Russian municipal entity of damages in connection with the unilateral termination of a contract, and for arbitration costs.

The court rejected the application on the grounds that the arbitral award had not yet entered into force because the respondent had appealed against it. The court based its decision on the fact that the arbitral award provided for the possibility of appeal within a period of 60 days. Such an appeal had been made to the Stockholm district court, which had refused to overturn the ruling. The respondent had subsequently lodged a further appeal. Since the appeal proceedings had not yet been concluded, the arbitral award had not entered into force, as a result of which there were no grounds for its enforcement. The corporation applied to a higher court to overturn that decision.

The higher court ruled that the position of the court that had refused to recognize and enforce the arbitral award was incorrect. It considered that provision for a party to appeal against an arbitral award through the courts did not in itself constitute grounds to consider such appeal a procedural action as such and, on that basis alone, to rule on the question of the time of entry of the arbitral award into force. The award made by the court of arbitration in Sweden was final and not subject to appeal. The provision made in the arbitral award for the possibility of appeal against that award through the courts did not mean that the arbitral award was not final.

The higher court overturned the ruling of the court of first instance and ordered a review of the case.
