

# THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS IN THE INTERNATIONAL PRIVATE LAW OF REPUBLIC OF MOLDOVA



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*This article analyses the problem of recognition and enforcement of foreign judgments based on the provisions of the Code of civil procedure of Republic of Moldova and international treaties of which the country makes part. The problems regarded include the classification of judgments into those that are only in need of recognition and those that have to be enforced in a compulsory way. Also the article includes a review of the procedure of addressing the court with a claim concerning the recognition and enforcement of a foreign judgment and the procedure of consideration of this claim.*

**Keywords:** *international civil procedure, recognition of foreign judgments, enforcement of foreign judgments, exequatur*

*В статье рассматривается признание и приведение в исполнение иностранных судебных решений на основании положений Гражданского процессуального кодекса Республики Молдова и международных соглашений, участницей которых она является. Затронуты вопросы классификации решений на те, которые нуждаются только в признании, и те, для которых необходимо обеспечить принудительное исполнение. Также рассматривается процедура обращения в суд с ходатайством о признании и исполнении иностранного решения и рассмотрения такого ходатайства.*

**Ключевые слова:** *международный гражданский процесс, признание иностранных решений, приведение в исполнение иностранных решений, экзекватура*

Decisions of national courts have a territorial character, because “a judicial decision represents a part of the legal order, whose territorial jurisdiction produced it”<sup>1</sup>. A judicial decision is able to obtain legal effect outside the state where it was pronounced, but for this a recognition procedure is needed and, in some situations, enforcement procedure as well. “Usually, a preliminary condition of reciprocity regarding the decisions of national courts is required”<sup>2</sup>. In accordance with the

1 Гетьман-Павлова И.В. Международное частное право: Учебник. — Москва: Эксмо, 2005. — С. 518.

2 Богуславский М.М. Международное частное право: Учебник. — Москва: Норма, Инфра-М, 2011. — С.615.

Code of Civil Procedure of Republic of Moldova, judicial decisions of foreign courts (including amicable agreements) are recognized and enforced *pleno jure* in the Republic of Moldova, if an international treaty of which Republic of Moldova is a part provides so or on the basis of reciprocity as applied to the consequences of foreign judgements (art.467, p.1<sup>3</sup>). As an example of such international treaties we can mention the Minsk Convention on legal assistance and legal relations in civil, familial and criminal cases<sup>4</sup>.

Legal systems of different states use a different approach to the recognition and enforcement of foreign judgements. There are states where an examination of the formal accuracy of the judgement and establishment of its conformity to the public order of the state of the court is needed; other states demand an *exequatur*; there are also states, which provide for a registration of a foreign judgement in a special registry<sup>5</sup>.

In the international private law of Republic of Moldova, a “foreign judgement” means a judgement in a civil case, pronounced by a court of general jurisdiction or a special court on the territory of a foreign state (art.467, p.2 of the Code of Civil Procedure), excluding those decisions, which provide provisional remedy, and decisions, which have a temporary enforcement (art.467, p.4 of the Code of Civil Procedure)

The recognition and enforcement of foreign arbitral decisions are regulated by special provisions of the Code of Civil Procedure (art.475–476).

The term, provided for demanding of enforcement of foreign judgements, is 3 years after the judgement in case came into legal force in the state where it was pronounced. If the omission of the term is motivated, it can be restored by a court of Republic of Moldova, as provided by the art.116 and art.467, p.3 of the Code of Civil Procedure. The person interested in the recognition and enforcement of a foreign judgement must address a court of Republic of Moldova with a request, in accordance with the territorial competence of the court (and the territory where the judgement in case is to be enforced). This court, as provided by art.468 of the Code of Civil Procedure, is established following one of the criteria:

1. Debtor’s domicile or residence;
2. The place where the property of the debtor is situated.

Art. 469 of the Code of Civil Procedure provides the contents of the request concerning the recognition and enforcement of a foreign judgement:

1. The name or company name of the creditor and of his representative in case if the latter gives in the request, their domicile or residence;
2. The name or company name of the debtor, his domicile or residence<sup>6</sup>;

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3 The Code №225 from 30.05.2003, published on 21.06.2013 in Monitorul Oficial Nr. 130–134.

4 The Convention on legal assistance and legal relations in civil, familial and criminal cases (Minsk, January 22, 1993). URL: <http://iv.garant.ru/document?id=10019702&byPara=1&sub=1668>

5 See, for instance: Богуславский М.М., *op.cit.*, с.615; Гетьман–Павлова И.В., *op.cit.*, с.519.

6 For a correct and quicker resolution of the case it is possible to indicate in the request such information, as phone numbers, fax numbers, e-mails etc. — Art.468, p.2 of the Code of Civil Procedure.

3. A petition to permit enforcement of the judgement or indication of a moment in time, when this enforcement is needed;
4. Documents provided by the international treaty of which Republic of Moldova is a part. If such treaty does not contain a list of needed documents, than the request must have the following annexes:
  - a. A copy of foreign judgement, which is to be enforced, authorized by the court in accordance with the established procedure;
  - b. An official document confirming the fact that the judgement in case had entered into legal force in accordance with the law of the state where it was pronounced, if this is not obvious from the contents of the judgement itself;
  - c. A document, which confirms that the defeated party did not take part in the process, though she was informed in the proper legal manner about the process taking place;
  - d. A document confirming the enforcement of the judgement, if it had been enforced before on the territory of the relevant state.

The documents indicated in the sub-paragraphs a), b) and d) must be accompanied by notarized translation in Romanian and legalized in accordance with art.466 of the Code. The legalization is not needed in case if the parties agree with presentation of documents as notarized copies only (art.469, p.4 of the Code).

The Code of Civil Procedure provides the following order of examination of the request concerning the recognition and enforcement of foreign judgement (art.470):

1. The request is examined in course of a session, the debtor being informed in the proper legal manner about the place, day and time of the session. Non-appearance of the debtor without proper motivation doesn't prevent the court from examining the request, in case if the debtor was informed and received the writ;
2. The court which examines a request concerning the recognition and enforcement of a foreign judgement is obliged to inform without delay the Ministry of Justice and, if needed, the National Bank of Republic of Moldova (in case if the request concerns a financial institution, licensed by the National Bank). This includes the transmission of request and annexed documents. The presence of a representative of the Ministry of Justice and, if it is the case, of the National Bank in the session which examines the request concerning the recognition and enforcement of a foreign judgement is required. Failure to appear, if the representatives of the Ministry of Justice and, if it is the case, National Bank have been informed in a proper legal manner, does not impede the examination of the case;
3. The court might satisfy a motivated claim of the debtor for postponing the examination, informing him about the decision;
4. After hearing the explanations of the debtor and examining provided evidences, the court adopts a ruling concerning permission or refusal of enforcement of foreign judgement;

5. If the foreign judgement contains decisions upon several claims that can be split, the court is able to give a separate ruling concerning every one of these claims;
6. In the course of examination of a request concerning the recognition and enforcement of a foreign judgement, the court in session might, if needed, ask for explanation from the person which put forward the request concerning the recognition, hear the debtor of the claims or ask for an explication from the foreign court that adopted the judgement itself;
7. The court of Republic of Moldova is not able to start a substantive re-examination of the case or change the foreign judgement. If needed, the court verifies if the conditions provided by the law for the permission of foreign judgement are satisfied;
8. Based on foreign judgement and the ruling concerning the recognition and enforcement of this judgment, which entered into force, a writ of execution is issued and transmitted to a law-enforcement officer, named by the creditor. If a law-enforcement officer is not named, articles 15 and 30 of the Executive Code are applied.

There are the following grounds for refusal in recognition and enforcement of a foreign judgement (art.471 of the Code of Civil Procedure):

- a) It did not yet enter into force on the territory of the state where it was pronounced, in accordance with the law of this state, or it is not binding for the defeated party;
- b) The defeated party was deprived of a possibility to take part in the process because she was not informed about its place, day and time in a proper legal manner;
- c) The examination of such cases makes part of the exclusive competence of the courts of Republic of Moldova;
- d) There is a decision of a court of Republic of Moldova, even if it did not enter into force yet, pronounced in a dispute between the same parties, concerning the same object and having the same foundation, or there are unfinished legal proceedings in a court of Republic of Moldova concerning a dispute between the same parties, concerning the same object and having the same foundation, which started before the addressing of a foreign court;
- e) The enforcement of this judgement might detriment the sovereignty of Republic of Moldova, put in danger its security or violate public order of Republic of Moldova;
- f) The prescriptive limit for the request concerning the recognition and enforcement of the judgement has expired, and the creditor's claim about renewal of this limit was not satisfied by a court of Republic of Moldova;
- g) The foreign judgement is a result of an infringement, which took place in the course of a proceedings, carried out outside the territory of the Republic of Moldova;

h) The foreign judgement might provide for a transfer of shares of a bank, licensed in the Republic of Moldova. In this case, an enforcement of a foreign judgement may be permitted only if there is a permission of the National Bank of the Republic of Moldova concerning the ownership of a substantive share in the charter capital of a bank or a conclusion of the National Bank concerning the possibility of ownership of shares without a preliminary permission.

Copies of ruling of the court, pronounced in accordance with art.470, p.3 of the Code of Civil Procedure, are transmitted by the court to the creditor and the debtor in term of 3 days after the pronouncing. The ruling can be appealed in a higher court in order and terms provided by the Code of Civil Procedure.

A ruling concerning recognition and enforcement of a foreign judgement can be appealed in a higher court, and, as jurisprudence of the Supreme Court of Republic of Moldova confirms, the result of this appeal may be a confirmation of the ruling, a refusal in recognition and enforcement or remanding the case for a new proceeding.

For example, the decision of the Supreme Court in the case №2r-249/10<sup>7</sup> from 15.09.2010 states that the Court of Appeal did not establish if there have been any legal foundations for prolongation of the term for addressing a court of Republic of Moldova with a request concerning recognition and enforcement of judgement of Briansk Court about collecting a debt of 3 000 054 rubles (the judgement was pronounced on July 28, 1997, but the request about its recognition put in only on July 15, 2003). The Court of Appeal made another mistake in the same case: it did not take into consideration the fact that on January 1, 1998 there was a denomination in Russian Federation, so, as a result, the banknotes of old type have been replaced with new ones in the ratio 1 000:1. So, the Court of Appeal pronounced a ruling which permitted collecting a debt 1 000 times bigger than it was in fact. The case was remanded for a new proceedings.

In the case №2r-336/2011<sup>8</sup> the Supreme Court found another violation of procedure. The defendant, who put in a writ of appeal, indicated that he was not informed about the session that took place in the Chisinau Court of Appeal on March 15, 2010. It was established from the case materials, that the notice about the session had been sent to a wrong address (“Tabacinaia Nouă, 31” instead of “Tăbăcăria Nouă, 31”). This case was remanded for a new proceeding as well, with new composition of the court.

At the same time, another decision of the Supreme Court deserves a special attention — the one pronounced in case №2r-341/12<sup>9</sup> on July 4, 2012. It possesses

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7 The database of the Supreme Court of the Republic of Moldova. URL: <http://csj.md/admin/public/uploads/Dosarul%20nr.%202r-249-10%20Nehitrov.pdf>

8 The database of the Supreme Court of the Republic of Moldova. URL: <http://www.csj.md/admin/public/uploads/Dosarul%20nr.%202r-336-11%20Anicheiciuc%20vs%20SRL%20Cavivad-Trans.pdf>

9 The database of the Supreme Court of the Republic of Moldova. URL: <http://www.csj.md/admin/public/uploads/Dosarul%20nr.%202r-341-12%20Fontana%20vs%20Popa%20recunoa%C5%9Fterea%20C5%9Fi%20executarea%20hot%C4%83r%C3%Aerilor%20str%C4%83ine%2006.07.14.03.00.00.doc>

a certain controversy. This decision left in force the ruling of Chisinau Court of Appeal about the refusal in recognition and enforcement of the decision of Italian tribunal from Latina from June 26, 2008 on the foundation that there is a decision — entered into force — of Buiucani Court from February 28, 2011, which concerns a trial between the same parties, about the same object and with the same basis. It is clearly indicated in the decision of Supreme Court, that the person who put in the appeal (Italian party) had misinterpreted the provisions of art.471, p.1, d) of the Code of Civil Procedure, considering that the Buiucani Court decision would have priority only if it would have been adopted before the decision of the Italian tribunal.

It must be noted, that the most important thing is not the day of pronouncing the decision, but the day when the claim was put in, because the court that was not the first one to accept the statement of claim is obliged to stop the proceedings and withdraw the case from consideration. The bilateral intergovernmental agreement concerning judicial assistance, recognition and enforcement of civil judgements, concluded on the December 7, 2006 between the Republic of Moldova and the Republic of Italy, also provides that a judgement, pronounced in one of the Parties, is recognized in another Party under the stipulation, that there is no other proceedings in a court of this Party, which started on the basis of a claim, put in earlier (art.17, p.1, e))<sup>10</sup>.

It is not clear from the text of the Supreme Court's decision from July 4, 2012 when the competing claims have been put in the relevant courts, but the decision states that "based on the existence of a decision, entered into force, of a court of Republic of Moldova, pronounced in the course of the resolution of a dispute [between the same parties] about the same object and with the same foundation, the court of first instance had refused without bias in recognizing and enforcing the foreign judgement". This argumentation is obviously incorrect, which is absolutely unacceptable for a Supreme Court.

Besides the situations when for the legal validity and actual consequences of a foreign judgement on the territory of Republic of Moldova there is a need for recognition and enforcement, legislation, doctrine and jurisprudence also define a category of foreign judgements, which do not demand an enforcement.

In accordance with art.474 of the Code of Civil Procedure, the following judgements can be recognized in the Republic of Moldova without the need for enforcement, due to their legal nature:

- a) The judgements, which concern the civil statute of a national of the state, where the court that pronounced the judgement is situated, or, if the judgement was pronounced in a third state, where the court that initially recognized this judgement is situated (in a state, of which both parties are nationals);
- b) The judgements concerning divorce, annulment or recognition of a marriage as being null and void, as well as the judgements in other disputes between

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10 The official webpage of the Consulate of the Republic of Moldova in Bologna. URL: <http://www.bologna.mfa.md/img/docs/acord-intre-guvernul-rm-guvernul-it-asistenta-judiciala-ra-recunoasterea-executarea-hotaririlor-materie-civila.pdf>

spouses, excluding those, which concern immovable property situated abroad, between nationals of Republic of Moldova and foreign nationals, if on the day of dissolution of the marriage at least one of the spouses lives outside the territory of the Republic of Moldova;

- c) The judgements concerning divorce, annulment or recognition of a marriage as being null and void in case if both spouses are nationals of the Republic of Moldova, if on the day of dissolution of the marriage both spouses lives outside the territory of the Republic of Moldova;
- d) Other judgements provided by the laws of Republic of Moldova.

The judgements of foreign courts, which do not demand an enforcement, are recognized without any subsequent procedure if there will be no objections from the interested party (art.472, p.1 of the Code of the Civil Procedure). The interested party, informed about the request to recognize a foreign judgement, has a right to address the court in his or her place of domicile or residence in term of a month with a claim concerning non-recognition of this foreign judgement (art.472, p.2 of the Code of Civil Procedure).

The objections of the interested party against the recognition of a foreign judgement are examined in an open session, with information of this party in a proper legal manner about the place, day and time of the session. Failure to attend, without any reasonable motivation, does not impede the examination of the objections, if the party received the writ, as provided by law (art.473, p.3 of the Code of Civil Procedure).

The court can satisfy a motivated claim of the interested party concerning a postponing of examination of objections, properly informing this party (art.473, p.4 of the Code of Civil Procedure).

After examining the objections against the recognition of foreign judgement, the court pronounces a ruling (art.473, p.5 of the Code of Civil Procedure). A copy of this ruling is sent to the person who addressed the foreign court with a claim or to his/her representative and to the person who declared the objections against the recognition of the judgement. The term reserved for this is 5 days after the pronouncement of the ruling.

The ruling of the court can be appealed in a higher court in order and terms, established by the Code of Civil Procedure (art.473, p.6).

The 1993 Minsk Convention provides that the decisions of courts of the Parties, which have entered into force and do not demand an enforcement, are recognized on the territory of the Parties without any special procedure, on condition that:

- a) The courts of the requested Party did not issue a previous judgement on the same case, which had entered into force;
- b) The case, in accordance with this Convention, or in lack of its provisions, in accordance with the laws of the Party, on the territory of which the recognition of the judgement must take place, does not refer to the exclusive competence of the judicial institutions of this Party.

These statements refer as well to the judgements concerning tutelage and guardianship, and the judgements concerning the dissolution of the marriage, pronounced by the institutions, which are competent in accordance with the law of the Party, on the territory of which the decision was pronounced (art.52 of the 1993 Minsk Convention).

A refusal in recognition of a foreign judgement, which does not demand an enforcement, must be based upon the foundation, provided in art.471, p.1 of the Code of Civil Procedure.

Consequently, the legislation of Republic of Moldova provides all needed rules, necessary for an effective legal regulation of recognition and enforcement of foreign judgements, with an aim of giving them the same legal force as the one of the judgements of the courts of the Republic of Moldova, and also the characteristic features, as prof. L.P. Anufrieva indicates, of irrefutability, exclusiveness and feasibility<sup>11</sup>.

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11 Ануфриева Л.П. Международное частное право: В 3-х т. Том 3. Трансграничные банкротства. Международный коммерческий арбитраж. Международный гражданский процесс. Учебник. — Москва: Издательство БЕК, 2001. — С.378.