

“Remington Worldwide Limited v Ukraine” Saga: The First ECT Arbitration Conducted in Russian

Remington Worldwide Limited v Ukraine is interesting not only as the first arbitration under the Energy Charter Treaty (the “ECT”) conducted in Russian. It also reasserts the importance of a fundamental aspect of the rule of law – the principle of legal certainty.

The case demonstrates how far-reaching the effects of the application of the exceptions from this principle might be in the context of inter-related cross-border litigation, arbitration and the enforcement of foreign judgments. It also serves as an example of how a debt under a contract between two Ukrainian entities may lead to an investment arbitration against the state of Ukraine.

The case has over twelve years’ history of still ongoing litigation in the Russian Federation, and almost nine years of enforcement proceedings in Ukraine and other jurisdictions, complicated by several criminal investigations. In 2008 these court proceedings led to a second ECT arbitration against Ukraine (in the first one – [Amto \(Latvia\) v Ukraine](#) – the arbitral tribunal [dismissed](#) all of Amto’s claims and the counterclaim of Ukraine).

The Arbitration

The Gibraltar registered company Remington Worldwide Limited (“**Remington**”) filed a request for arbitration with the SCC on 22 September 2008. According to information [communicated](#) by the Ministry of Justice of Ukraine, the company accused Ukraine of violating several provisions of [Article 10](#) of the ECT, and, in particular, of failure to provide effective means for the assertion of claims and enforcement of rights under Article 10(12) of the ECT.

These allegations concerned the non-enforcement in the territory of Ukraine of the judgment rendered by the Commercial Court of Saint Petersburg and the Leningrad Region in case No.7455/00 (the “**Judgment**”, the “**Saint Petersburg Court**” and “**Case No.7455/00**” respectively). The amount of Remington’s claims in arbitration was US\$ 35,923,997.16.

The award was rendered on 28 April 2011 (the “**SCC award**”) but still remains unpublished. The Ministry of Justice of Ukraine [reported](#) that the arbitral tribunal had found that Ukraine had violated provisions of Article 10(1) of the ECT with respect to the creation of stable, favourable and transparent conditions for investors of other Contracting Parties. The tribunal awarded to the investor US\$ 4,493,464.97 in damages to compensate for the above mentioned violation of the ECT, as well as post-award interest.

Enforcement of the SCC Award

In 2011 Remington filed its first request for the recognition and enforcement of the SCC award against the state of Ukraine as represented by the Cabinet of Ministers of Ukraine. The court of first instance [denied](#) the request and found that the Cabinet of Ministers of Ukraine had not taken part in the arbitral proceedings, as this function had been delegated to the Ministry of Justice of Ukraine.

The Court of Appeal [upheld](#) this denial and clarified to Remington its right to file another request against the proper debtor. The court of third instance reversed both rulings and [remitted](#) the case to the lower court for new consideration.

In 2012 Remington filed the second request, this time against the State of Ukraine. The Ministry of Justice of Ukraine, representing the State in these proceedings, did not object to this request. After the court of first instance [granted](#) the second request on 11 July 2012, Remington [withdrew](#) the first one.

Original Case No.7455/00 that Led to the Arbitration

Although not all the Russian court decisions in case No.7455/00, let alone the Judgment, are publicly available, its procedural history can still be reconstructed and more recent [judgments](#) can be retrieved from [the case “card”](#) in the Russian commercial courts’ on-line database.

The dispute arose out of a sales contract concluded in 1999 between Mobil and Ukrenergomashkomplekt. The consignee of the goods – overvoltage limiters – was Zaporozhskaya Nuclear Power Plant, a structural subdivision of the Ukrainian state enterprise National Nuclear Energy Generating Company “Energoatom” (“**Energoatom**”). Ukrenergomashkomplekt had failed to pay the full contract price to Mobil, presumably because of non-receipt of the payment from Energoatom.

In March 2000, Elektrokeramika, a Russian company to which Mobil had assigned its right of claim, initiated debt recovery litigation against Ukrenergomashkomplekt before the Saint Petersburg Court. In the course of the trial, Elektrokeramika requested to join Energoatom as the second respondent, and later changed its claims requesting to return the unpaid goods for a total amount of US\$ 25,080,000.

The Saint Petersburg Court granted these claims. However, as the return of goods was impossible, it further approved the settlement agreement between Energoatom and Elektrokeramika on repayment in cash and promissory notes. A year later, upon the request of Remington, an assignee of Elektrokeramika, the same court substituted the creditor and overturned its previous judgment in connection with the newly discovered circumstances. On 24 December 2002 the Saint Petersburg Court rendered the Judgment obliging Energoatom to pay “Remington Worldwide Limited Ltd.” US\$23,080,000. In 2007 the same court held that the correct creditor’s name was “Remington Worldwide Limited”.

Energoatom is still [trying](#) to get the Judgment set aside in the courts of the Russian Federation in view of newly discovered circumstances. In particular, it is invoking the alleged invalidity of the assignment agreement between Elektrokeramika and Remington, as well as the forgery of the signature under Remington’s request for substitution of the creditor in the court proceedings.

According to documentation in the criminal investigation, the assignment agreement contained only the facsimile signature of Remington’s President. The President himself has stated that he had never signed the agreement nor the request. The Thirteenth Commercial Court of Appeal will [hear](#) Energoatom’s recent appeal on 11 September 2012.

Non-Enforcement of the Judgment in Ukraine

According to the publicly available state registry of court judgments of Ukraine, the recognition and enforcement of the Judgment in Ukraine generated several separate court proceedings. Some of them related to the partial enforcement of the Judgment in Moldova. However, the principal proceedings appear to have been as follows.

In September 2003 Remington filed a request for the recognition and enforcement of the Judgment in Ukraine. This was granted by the first instance court on 17 December 2003, and further confirmed by the Supreme Court of Ukraine. Both courts also granted the application of the creditor for issuance of a duplicate of the writ of execution.

However, in 2008 the case was reconsidered by the Supreme Court of Ukraine within exceptional circumstances revision proceedings. On 10 April 2008 it [overturned](#) both rulings regarding the duplicate of the writ of execution and left Remington's application without consideration. Presumably, this judgment of the Supreme Court of Ukraine gave rise to the ECT arbitration against Ukraine.

On 23 April 2009 the Supreme Court of Ukraine [reversed](#) both rulings which granted enforcement and remitted the case to the lower court for new consideration. The first instance court left the request for the recognition and enforcement of the Judgment in Ukraine without consideration and returned it to Remington. The Court of Appeal upheld this ruling and the High Specialised Court of Ukraine on Civil and Criminal Cases did the same on 15 February 2012.

The latter [restated](#) that the initial request for the recognition and enforcement of the Judgment had been signed by a person whose power of attorney: (i) had not been duly legalised; (ii) had borne the seal of a different legal entity – “Remington Worldwide Limited”; and (iii) comprised a forged signature of the company's President, who has denied in writing the issuance of such a power of attorney and ever having filed a request for the recognition and enforcement of the Judgment in Ukraine.

The third instance court confirmed that the request had been correctly returned to Remington without consideration. The court found that the request had not met the requirements of the [Civil Procedure Code of Ukraine](#), as it was signed by an unauthorised person and the power of attorney was not duly executed.

A Hypothetical Outcome

The possibility of the cancellation of the Judgment by the Russian courts could create quite an interesting hypothetical situation: if Energoatom succeeds with its recent appeal, Remington will be put into the position of never having been the Judgment creditor at all. If so, its status as an investor under the ECT will look quite different and the non-enforcement of the Judgment in Ukraine could appear in a new light.