

LAW AND INTERNATIONAL LAW

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PROSPECTS FOR THE RECOGNITION AND ENFORCEMENT OF DECISIONS OF UKRAINIAN COURTS ADOPTED AGAINST THE RUSSIAN FEDERATION IN THE COURTS OF THE REPUBLIC OF POLAND

***Abstract.** The process of applying to the courts of the Republic of Poland for recognition and enforcement of decisions adopted in the courts of Ukraine has been explored. The possibility of enforcing decisions of Ukrainian courts, recognized in the courts of the Republic of Poland, on the territory of Poland and other member-states of the European Union has been investigated.*

***Keywords:** judicial immunity, decision of Ukrainian court, recognition of the decision, enforcement of the decision.*

Ukrainian business entities suffered huge financial losses as a result of the war with the Russian Federation. Some buildings cannot be rebuilt, productions cannot be restored. Ukrainian business entities can expect compensation for damages caused by Russia from the state of Ukraine or international organizations.

Currently, the Government of Ukraine is working on the conclusion of a multilateral international agreement, which will provide for an international legal mechanism for compensation for damages caused to Ukraine as a result of Russia's military aggression. Such mechanism includes the creation of a special Commission for International Claims, which will consider claims for damages of individuals, enterprises and Ukraine as a state. In addition, it is envisaged to create a compensation fund at the expense of Russian assets and its related legal entities and individuals, which are frozen/arrested by the participating states, and/or direct contributions of Russia [1]. So far, the process of creating such mechanism is still ongoing.

On the basis of self-regulation of economic activity, it is advisable for business entities to independently apply to international commercial arbitrations, the European Court of Human Rights and the courts at the place of the damage with claims to the Russian Federation for full compensation for the losses incurred, including lost profits.

Until recently, the possibility of filing a lawsuit against the Russian Federation was excluded due to the fact that it has judicial immunity in accordance with Art. 79 of the Law of Ukraine on International Private Law [2]. But in the resolution dated April 14, 2022 in case No. 308/9708/19, the Supreme Court concluded that the court of Ukraine, considering a case where the Russian Federation is identified as the defendant, has the right to ignore the immunity of this country and consider cases of compensation for damage caused to an individual as a result of the armed aggression of the Russian Federation, according to a lawsuit filed against this foreign country. In addition, starting from 2014, there is no need to send requests to the Russian Embassy in Ukraine regarding the consent of the Russian Federation to be a defendant in cases of compensation for damage in connection with the Russian Federation's armed aggression against Ukraine and its disregard of the sovereignty and territorial integrity of the Ukrainian state. And starting from February 24, 2022 such sending is also impossible due to the termination of diplomatic relations between Ukraine and the Russian Federation [3].

This legal position was confirmed by the Supreme Court in the resolution dated May 18, 2022 in case No. 760/17232/20-ts and the following additional arguments about the absence of the judicial immunity in the Russian Federation were given: maintenance of jurisdictional immunity of the Russian Federation will deprive plaintiffs of effective access to court to protect their rights, which is incompatible with the provisions of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms; judicial immunity of the Russian Federation does not apply due to customary international law codified in the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004); judicial immunity of the Russian Federation is not applicable in view of the violation of the state sovereignty of Ukraine by the Russian Federation, and therefore it is not an exercise

by Russia of its sovereign rights protected by judicial immunity; the actions of the Russian Federation went beyond its sovereign rights, since any foreign state does not have the right to carry out armed aggression against another country [4].

However, it is very difficult to enforce the decisions of Ukraine courts on compensation for damages caused to the business entities as a result of the war on the territory of Ukraine. Therefore, it is expedient to apply to the court of the state, on whose territory the property of the Russian Federation is located, with petitions for the recognition and enforcement of the court's decision, which determined the amount of compensation for the damages. In addition, the state where the court's decision will be enforced must determine the legal mechanisms for the confiscation of property of the Russian Federation and the implementation of compensation for damages based on the court's decision.

For example, in Poland the confiscation of property requires changes to the Constitution, which will be dealt with by the Sejm. The basic law would include provisions on “universal mechanisms” that would enable the State Treasury to take over property remaining in jurisdiction of Poland, and which is to support Russian aggression. So far, Russian property can be frozen in Poland on the basis of the European Union regulations [6; 7], which are the legal basis for the application of the European Union sanctions. Pursuant to the same provisions, Russian assets were frozen (and not confiscated), among others, in Italy, Germany, the Netherlands and some of the Baltic states. If the new directives are adopted, then member-states will be able to decide for themselves how to manage the seized property [8]. Most of them declare that they will use it for the reconstruction of Ukraine after the end of the war.

The decisions of the Ukrainian courts can be recognized and enforced on the territory of a foreign state on the basis of International agreements, conventions or the principle of reciprocity. Thus, the Agreement on Legal Assistance and Legal Relations in Civil and Criminal Matters dated May 24, 1993 (hereinafter referred to as the Agreement) is in force between Ukraine and the Republic of Poland, which, among other things, regulates the procedure for mutual recognition and enforcement of the court's decisions of a Contracting State on the territory of another Contracting

State. The provisions of this Agreement also apply to business entities (Art. 1).

According to Art. 51 of the Agreement, a request for recognition and enforcement of the decision can be submitted by a business entity directly to the relevant court of Poland, on the territory of which the decision must be recognized and enforced, or also through the mediation of the court of Ukraine, which considered the case in the first instance.

The following must be attached to the petition: the decision or its certified copy together with confirmation that the decision has entered into legal force and is subject to enforcement; a document confirming that the party against whom the decision was made and who did not participate in the proceedings received a summons to the court session in a timely and proper manner; certified translation of documents in Polish [9].

Diplomatic relations between Ukraine and the Russian Federation have been severed, the Russian Federation has been deprived of judicial immunity, however, in order for the petition to be accepted by the courts of Poland for consideration and so that there are no formal obstacles to the recognition and enforcement of the court's decisions, it is expedient for the business entity to provide to the court of Poland a confirmation of the posting of an announcement about the consideration of the case in the court of Ukraine, on the official web portal of the Judiciary of Ukraine (<https://court.gov.ua>).

The legislation of Poland, in whose territory the decision must be recognized and enforced, is applied for the recognition and enforcement of the decision (Art. 52 of the Agreement). In addition, the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (1968) was signed between member-states of the European Union. This Convention provides a simplified mechanism for the enforcement of decisions of one Contracting State on the territory of another Contracting State. In particular, in Art. 26 of the Convention defines that a judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required. A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an

order for its enforcement issued there (Art. 50) [10]. On the basis of Art. 63 of this Convention, its effect extends to all member-states of the European Union. Therefore, the court's decision of Ukraine, recognized by the court of Poland, on the basis of this Convention can be enforced both on the territory of Poland and on the territory of another member-state of the European Union. In addition, in order for the Russian Federation not to be able to use jurisdictional immunity in the process of enforcing court's decisions, the member-states of the European Union must recognize Russia as a terrorist state at the legislative level.

Currently, on the basis of European Union directives Russian assets worth € 13.9 billion have been frozen in Germany, France, Ireland, Austria, Belgium and Luxembourg [11]. Russian financial assets worth 160 million zlotys have been frozen in Poland [12]. As soon as the European Union recognizes Russia as a terrorist state and adopts directives that will provide for the possibility of confiscation of Russian assets, Ukrainian business entities, that suffered losses as a result of the war with the Russian Federation, will have a real opportunity to compensate for their losses.

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