

Serbia & Montenegro: Enforcing Foreign Court Judgments and Arbitral Awards



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An Austrian company might believe it did a good job if it convinced a Serbian party to accept jurisdiction of a court in Austria. On the contrary—it ensured itself a court decision which could never be enforced against its debtor in Serbia. Such Austrian court judgment could strike the same barrier in Montenegro as well. Although a dispute is the last thing to expect as a result of a promising business deal, it has to be among the first things on the agenda when negotiating a transaction.

Choosing a dispute resolution clause is not simply a question of whether you prefer resolving disputes before a court or via arbitration. The clause should provide the parties with a fast, reliable, accessible, and least expensive forum for dispute resolution. At the same time, it should ensure that the litigation/arbitration ends with a final and binding decision that will be easily enforceable in a jurisdiction where the debtor has most of the assets. Otherwise, it is useless.

Recognition and enforcement of foreign court judgments

In disputes with an international element, parties can select the jurisdiction of a foreign court. But before such foreign court judgment can be enforced in Serbia or Montenegro, it must be recognised by local courts in a separate non-contentious procedure. After being recognised, the foreign court judgment is equal in force to a domestic one and can be enforced.

- Serbian and Montenegrin courts will refuse to recognise the foreign court judgment if: (i) it is contrary to the public order of Serbia, (ii) there is exclusive competence of Serbian courts, (iii) the other party was not granted the right to defend, or (iv) there is already a final and binding decision in the same matter between the same parties. The court will hold the recognition procedure if there is already an on-going procedure on the same legal matter before domestic courts.
- Reciprocity is also a requirement for recognition of foreign court judgment. As a general rule, in both countries factual reciprocity would suffice, meaning there would be no need for a bilateral arrangement to that effect. Additionally, there is a rebuttable presumption that reciprocity exists, so the opposing party must prove the lack of reciprocity with the country of origin of the relevant court judgment.

Surprisingly, and despite strong ties between Serbia and Austria, there is no reciprocity in recognition of commercial court judgments between them. This is because Austria requires diplomatic reciprocity. As there is no bilateral agreement for recognition and enforcement of judgments of commercial courts, Austrian courts will refuse to recognise Serbian court judgments. Therefore, even factual reciprocity between these two countries does not exist. This lack of reciprocity with Austria is already examined in court practice in Serbia due to which Serbian courts can refuse recognition of the Austrian court judgment even without objection of the opposing party.

Given the lack of diplomatic reciprocity between Montenegro and Austria, which implies that Montenegrin court judgments would not be enforced in Austria either, the Montenegrin court can also refuse the Austrian court judgement. However, unlike in Serbia, the lack of reciprocity between Austria and Montenegro for the purpose of recognition of the foreign court judgment has not been examined in practice.

Recognition and enforcement of foreign arbitral award

In principal, a domestic arbitral award is one rendered in arbitration seated in Serbia/Montenegro, while a foreign arbitration award is one rendered in arbitration seated abroad. A domestic arbitration award can be enforced directly in Serbia and Montenegro since it has the force of a final domestic court decision. However, a foreign arbitral award must first be recognised by the competent court in Serbia/Montenegro.

The recognition and enforcement of foreign arbitral awards in Serbia is governed by the Serbian Law on Arbitration, while in Montenegro this matter is regulated by the Montenegrin Private International Law. Both Serbia and Montenegro are also signatories to the New York Convention on Recognition and Enforcement of Arbitral Awards (the New York Convention) and the European Convention of International Commercial Arbitration of 1961.

- Grounds for refusal of recognition under the Serbian Law on Arbitration correspond to those listed in Article V of the New York Convention, and they are not country specific. There are two groups of reasons, one which courts examine *ex officio* and the other which courts examine only at a party's request. Reciprocity is not a requirement for enforcement; thus the country of origin should not be a concern from that aspect.
- While in Serbia reciprocity is not required for recognition of the foreign arbitral award, such conditions still exist under the Montenegrin Private International Law and apply to the extent the New York Convention applies.
- Recognition of a foreign arbitral award can be the subject matter of an independent proceeding, or it can be decided as a provisional/preliminary question in an enforcement proceeding.

The advantage of an independent proceeding is that once an arbitral award is recognised, it obtains the force of a domestic final court judgment. In other words, it has effect towards everyone and can be enforced in as many enforcement proceedings as necessary to recover the entire amount of the claim. There is no need to repeat the recognition process.

The disadvantage is that this proceeding can take a significant amount of time if the appeal is lodged. On the other hand, recognition of the foreign arbitral award as a provisional/preliminary question directly in the enforcement procedure can be faster than the independent proceeding. However, if recognition of an arbitral award is decided as provisional question within the enforcement proceeding, then the recognition is effective only in such enforcement proceeding. In other words, if the lender does not manage to enforce the entire claim in one proceeding, it would have to go through the recognition process again.

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