

Enforcement of the Arbitration Award for the Purposes of Exercise of Enforceability

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Abstract: Modern understanding of the compulsory enforcement of the arbitral award for the purposes of exercise of enforceability is studied. In particular, the author analyzes the following: special aspects of exercise of enforceability, legal nature of the arbitral proceedings, place of the arbitral award performance, including compulsory, in the arbitration mechanism. The author believes that the civil rights protection mechanism through arbitration (arbitral proceedings) is performed in terms of exercise of enforceability, provided by Article 46 of the Constitution of the Russian Federation. Legal nature of the judicial protection mechanism with regard of provisions of Article 11 of the Civil Code of the RF suggest the complex nature of civil rights protection, which is expressed, on the one hand, in possibility of settlement of a dispute either in the state or in the arbitration court; on the other hand, in the need to include the compulsory enforcement into the mechanism specified. The analysis of legal events in consideration is performed through understanding the unity of the mechanism of civil rights judicial protection within law-enforcement activity, consisting of basic stages: adjudgment and law enforcement exercise. The conclusion generalizes that enforceability in its modern sense embraces resort not only to justice, but also to arbitral proceedings. In this, the judicial protection efficiency is directly related to securing the act of legal enforcement (judgment). The purpose of this article is building the model of implementation of the mechanism of civil rights judicial protection, that reflects connection between state and non-state courts, and the stage of compulsory enforcement of their acts. The identification and substantiation of such interconnection correspond to the feature of scientific novelty. Study materials and results may be used as theoretical background for further scientific development of the subject area, related to arbitral proceedings development.

1 INTRODUCTION

Article 46 of the Constitution of the Russian Federation establishes enforceability. The meaning of this right establishes possibility of judicial protection of violated rights to every person.

Customarily, legal doctrine in terms of constitutional law has been considering enforceability exclusively from the perspective of identification only with judicature activity. This position is also reflected in positions of the Constitutional Court of the RF for separate cases. Therein, definition of the arbitration courts' role in explanations of higher judicial authorities is not connected with exercise of enforceability. The basis arbitral proceedings, from the perspective of this

approach, is application of provisions of Part 2 Article 45 of the Constitution of the Russian Federation, that refers to freedom in selecting the means of protection. Further, differences in the selection of constitutional basis leads to divergence in interpretation in transposition to industry-specific legislation. Therein, considering arbitration (arbitral proceedings) from the perspective of its legal nature as the law-enforcement activity procedure requires system interpretation of provisions of constitutional, civil and procedural law collectively. Therefore, from the perspective of constitutional law, we should critically assess Part 2 of Article 45 of the Constitution of the Russian Federation, where means of protection, but not the procedure, are described as the basis for arbitration use.

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From the perspective of civil rights, means of protection are established by Article 12 of the Civil Code of the RF and are directly related to the subject of requirements, exercised, inter alia, in accordance with judicial protection. The latter is considered in Article 11 of the Civil Code of the RF, that establishes the list of competent state and non-state authorities – courts that exercise judicial civil rights protection.

Therein, for procedural understanding of nature of arbitral proceedings, in this case, it would be more logical to discuss the application of Article 46 of the Constitution of the Russian Federation, that establishes enforceability. Therein, according to the author, judicial protection, performed within law-enforcement activity in exercise of the right under consideration, is not identical to judicature activities. In this sense, the enforceability is exercised not only by a state authority, included into the judiciary system, but also other institutions, that, under the law, are entitled to carry out judicial protection activities.

However, from the perspective of the state, judicial protection, exercised by judicial authorities, is guaranteed, but judicial protection, exercised by other institutions (in particular, by arbitration courts), is not guaranteed. It is conditioned by the arbitration private nature, where the selection of the procedure specified is conditioned by individuals' will.

We would like to support the idea of a foreign author, expressed rather recently, "judicial protection" covers activities in protecting rights and freedoms by any competent, independent, and impartial court, both included and not included into the judiciary system."

From the beginning, we should pay attention to the complex inter-industry nature of the problem, especially in context of a direct subject of this study: a place of compulsory enforcement of the arbitral award from the perspective of exercise of enforceability.

Framework of the study consists of general scientific methods of system analysis and comparative study, and legalistic approach, methods of literal, systemic and axiological interpretation of legal norms, inherent to legal science.

2 EXERCISE OF THE RIGHT TO TRIAL AS LAW-ENFORCEMENT ACTIVITY

The author defines exercise of the right to trial as, first of all, law-enforcement activity which includes

several stages, such as enforcement, including compulsory enforcement.

In cases when we establish that enforceability shall be exercised within the single law-enforcement activity mechanism, we have a coherent picture: arbitral proceedings or arbitration stage, in case of non-execution of judgment voluntarily, requires compulsory enforcement. In this context, compulsory enforcement becomes necessary in arbitral proceedings mechanism implementation within the exercise of enforceability.

Take the term "mechanism of rights judicial protection." To make it clear, the need for implementing and operating the specified category emerged in connection with enforceability explanations, provided by the Constitutional Court of the RF, namely, the need to identify the consolidated complex, including both a stage of settlement of a dispute (in a court proceedings) and a stage of enforcement, including compulsory enforcement. Therefore, compulsory enforcement is considered as an element of the judicial protection mechanism of the rights that provides the efficiency of the latter. To be noticed is that the issue of the efficiency of civil rights protection both within the state judiciary system, arbitration, and with the use of different means of protection, is one of topical issues in science.

In this case, when referring to the idea of step-by-step implementation of the judicial protection mechanism, two key stages may be identified conditionally: a stage of case hearing (settlement of a dispute) by a court and a stage of enforcement (including compulsory enforcement). The author believes that system interpretation of Article 46 of the Constitution of the Russian Federation and Article 11 of the Civil Code of the RF allows discussing the case settlement in the court of first instance, commercial or arbitration court. In this, the applied case consideration procedure is different, but law-enforcement activity goals are shared.

3 ARBITRATION (ARBITRAL PROCEEDINGS) AS A STAGE OF THE MECHANISM OF CIVIL RIGHTS JUDICIAL PROTECTION

The possibility of judicial protection through production before the arbitration court, provided for by Article 11 of the Civil Code of the RF, actually classifies arbitration as judicial protection, thereby

defining its final stage within exercise, including compulsory enforcement.

To be noticed is that classification of arbitration as judicial procedure of protection does not depreciate the private nature of the arbitration court activities for dispute resolution. In other words, the exercise of enforceability can be exercised by subjects concerned both by resort to state judicial authorities and by resort to arbitration courts. The mechanism specified, as noted previously, provides for the presence of an enforcement stage, including compulsory enforcement. Presence of a stage of compulsory enforcement of the arbitration judgment does not depreciate the private nature of arbitration, but suggests the presence of public elements in the single judicial protection mechanism through non-state arbitration courts.

Law-enforcement activity of courts for civil rights protection is performed according to the specific procedure, determined by civil procedural form. In respect of the judicial protection mechanism, it means in the context considered that the first stage (settlement of a dispute) is performed by the state court according to the regulations of the imperative civil procedural form, determined by standards of the Civil Procedural Code of the RF and the Commercial Procedure Code of the RF and having public nature with the certain features.

At this, the arbitration court activities within settlement of a dispute is also set by the procedural form, which is a sort of civil procedural form, and is defined by combination of private and public legal elements.

4 COMPULSORY ENFORCEMENT OF THE ARBITRAL AWARD AS THE STAGE OF EXERCISE OF ENFORCEABILITY

Law-enforcement activity for settlement of a substantive dispute by the court is aimed at rendition of a final act, known as judgment, that liquidates the substantive law dispute, but the judicial protection mechanism is not completed at this. The provision specified shall apply to activities of both state and arbitration court. This notion is partially reflected in the positions of the Constitutional Court of the RF for separate cases, and in scientific articles.

The stage of settlement of a civil case by judicial authorities of civil jurisdiction (state and arbitration courts) provides for execution of the resulting

enabling legislation (judgment) by the parties. In terms of the public procedural form, the exercise is conditioned by a valid property, generally binding nature, and the arbitral award is exercised within the arbitration agreement. As recorded in Article 38 FZ "On Arbitration (Arbitral Proceedings) in the Russian Federation", binding nature in terms of the arbitral award acts as the fulfillment of terms and conditions of the arbitration agreement, when the parties, after signing it, undertook to voluntarily exercise the arbitral award.

In case of non-execution of judgment within the mechanism, there is a need to enable compulsory enforcement, including that in relation to the arbitral award. From the perspective of procedural arbitration form, compulsory enforcement can be defined as an element that is public by its nature, but optional from the perspective of composition. In addition, referring to the stage of compulsory enforcement within procedural form of arbitration, is specific because it is implemented sequentially and requires conformity to the preliminary stage, implemented in public procedural form – issuance of an enforcement order to the arbitral award according to the procedure determined by procedural codes.

5 CONCLUSION

The study conducted allows forming a coherent picture in terms of exercise of judicial protection through the shift of emphasis from the category "state judicial protection" to the term "efficient judicial protection", from the terms "state control" to "interaction and assistance."

Consideration of arbitration from the perspective of mechanism of judicial protection of subjects' rights allows assessing the meaning and import of the execution of judgment, including compulsory enforcement, as the necessary guarantee, not contradictory to private nature of the arbitration element.

Therein, procedure, provided for by civil procedural legislation and arbitration procedural legislation, related to the issuance of an order of enforcement to the arbitral award, should be considered as a preliminary stage for exercise of compulsory enforcement of the arbitral award, but not the judicial control form.

The consolidated judicial protection mechanism, established in the Russian Federation, is efficient when all the required legal means and current statutory procedures are used. The sphere of private civil matters provides for the possibility of selecting

alternative judicial protection forms and mechanisms, including those through arbitration.

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