

## **RULING**

### **OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION**

following the complaint of OAO Ryazan Metal Ceramics Instrumentation Plant regarding the violation of constitutional rights and liberties by Article 246(2) of the Arbitrazh Procedure Code of the Russian Federation combined with Article 321(1)(1) of the same Code.

Saint-Petersburg

2 November 2011

The Constitutional Court of the Russian Federation, composed of Chairman Zorkin V.D., Judges Aranovsky K.V., Boytsov A.I., Bondar N.S., Gadzhiev G.A., Danilov Yu.M., Zharkova L.M., Zhilin G.A., Kazantsev S.M., Kleandrova M.I., Knyazev S.D., Kokotov A.N., Krasavchikova L.O., Mavrin S.P., Melnikov N.V., Rudkin Yu.D., Khokhryakova O.S., and Yaroslavtsev V.G.,

having examined in plenary session the report of Judge Zhilin G.A. who, on the basis of Article 41 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, conducted a preliminary study of OAO Ryazan Metal Ceramics Instrumentation Plant’s complaint,

established:

1. In its complaint before the Constitutional Court of the Russian Federation, OAO Ryazan Metal Ceramics Instrumentation Plant challenges the constitutionality of Article 246(2) of the Arbitrazh Procedure Code combined with Article 321(1)(1) of the same Code, which determine the time limits for submitting a foreign arbitral award for coercive enforcement and for submitting an enforcement writ for enforcement.

As it follows from the submitted materials, following OAO Ryazan Metal Ceramics Instrumentation Plant’s failure to perform its obligations under the awards of the German Institute of Arbitration (DIS) of 11 August 2005, 14 October 2005 and 27 December 2005, the company Lugana Handelsgesellschaft mbH, on 7 August 2008, applied to the Arbitrazh Court of the Ryazan Region requesting recognition and enforcement of the awards. The Arbitrazh Court of the Ryazan Region, by a Ruling of 2 February 2009, granted the application regarding the principal debt, and the case was then examined by the arbitrazh Courts in various instances. The Presidium of the Highest Arbitrazh Court of the Russian Federation, by a Resolution of 2 February 2010, recognized the right of Lugana Handelsgesellschaft mbH to coercive enforcement of the abovementioned awards and an enforcement writ was issued on 23 March 2010.

Objecting to the conduct of the enforcement proceedings under the enforcement writ, on 27 April 2010, OAO Ryazan Metal Ceramics Instrumentation Plant filed a claim with the Arbitrazh Court of the Ryazan Region requesting that the enforcement writ be recalled and amended, in particular, by adding that the time limit for the submission of the enforcement writ for enforcement had expired. By a Ruling of 4 May 2010, the Arbitrazh Court of the Ryazan Region rejected the claim. This issue was examined in appeal, cassation and supervisory proceedings. A Resolution of the Presidium of the Highest Arbitrazh Court of the Russian Federation of 9 March 2011 upheld the Ruling of the first instance arbitrazh Court.

In the complainant's opinion, the challenged norms are inconsistent with Articles 19(1), 19(2) and 46 of the Constitution of the Russian Federation, and violate the principle of legal certainty, as they allow the establishment of an excessively long time limit for the enforcement of foreign arbitral awards.

2. The Constitution of the Russian Federation, which guarantees the freedom of economic activity, including the freedom of contract, as well as the right to judicial protection exercised on the basis of equality of all before the law and the courts, recognizes and safeguards equally all forms of property, in particular, property of foreign citizens and their affiliates where it is not otherwise provided in a federal law or in an international treaty of the Russian Federation (Articles 8, 18; 19(1), 19(2), 46(1) and 62(3)). Pursuant to Article 15(4) of the Constitution of the Russian Federation, generally recognized principles and rules of international law and international treaties of the Russian Federation are constitutive elements of the Russian legal system. Where an international treaty of the Russian Federation provides otherwise, the rules provided in the international treaty shall apply.

Concretizing the abovementioned constitutional provisions, federal legislation guarantees the equality of participants in economic relations, freedom of contract, the necessity of proper performance of obligations arising from contracts according to their terms and the requirements of the law, and the inadmissibility of unilateral refusal to perform obligations. It also provides for judicial protection of violated rights, especially in arbitral proceedings, and priority of international treaties over the law (Articles 1, 7, 8, 11, 309 and 310 of the Civil Code of the Russian Federation, Articles 1, 6, 31 and 44 of Federal Law No. 102-FZ of 24 July 2002 "On Arbitral Tribunals in the Russian Federation").

Pursuant to Article III of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (ratified by Decree of the Presidium of the Supreme Council of the USSR of 10 August 1960), each contracting State shall recognize arbitral awards (i.e. arbitral awards rendered in the territory of other States) as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon.

Accordingly, the Arbitrazh Procedure Code of the Russian Federation provides that arbitral awards rendered in the territory of foreign States in disputes and other cases arising from the conduct of entrepreneurial or other economic activities, shall be recognized and enforced in the Russian Federation by arbitrazh courts, provided that recognition and enforcement of such awards is envisaged by an international treaty of the Russian Federation (Article 241(1)).

The coercive enforcement of a foreign arbitral award, pursuant to Article 246 of the Arbitrazh Procedure Code of the Russian Federation, shall be performed on the basis of an enforcement writ which shall be issued by an arbitrazh court having rendered a ruling on the recognition and enforcement of a foreign arbitral award, according to the procedure provided for in the same Code and the Federal Law on Enforcement Proceedings; a foreign arbitral award may be submitted for coercive enforcement within three years following the day it entered into force; if this time limit has expired, it can be restored by an arbitrazh court upon request of the complainant pursuant to the rules provided for in Chapter 10 of the same Code.

Pursuant to Articles 321(1)(1) and 321(3) of the Arbitrazh Procedure Code of the Russian Federation, and Articles 21(1) and 22(1) of Federal Law No. 299-FZ of 2 October 2007 "On Enforcement Proceedings", an enforcement writ can be submitted for enforcement within three years following the day the judicial act has entered into force; the time limit for submitting the enforcement writ for enforcement shall be interrupted by the submission of the enforcement writ for enforcement and, unless otherwise provided for by the federal legislation, by partial performance of the judicial act.

Therefore, the challenged norms, which contain provisions on time limits for the enforcement of a foreign arbitral award and for the submission for enforcement of an enforcement writ, issued on

the basis of a decision of an arbitrazh court of the Russian Federation, combined with the provisions of the Constitution of the Russian Federation and the rules of international law, as well as other provisions of federal legislation, do not contain any uncertainties and cannot be regarded as violating constitutional rights, and in particular the right to judicial protection of participants in economic relations, which have entered into an arbitration agreement to submit the dispute to an arbitral tribunal seated in the territory of a foreign State.

Examining the application of the company Lugana Handelsgesellschaft mbH, as well as the submissions of the debtor who challenged the right of the applicant to enforce the awards of the German Institute of Arbitration (DIS), the arbitrazh Courts, on the basis of an examination of the factual circumstances of the case, established that the application was submitted within the three-year time limit established by the Arbitrazh Procedure Code of the Russian Federation for the recognition and enforcement of foreign arbitral awards, and there were no obstacles to their enforcement in the territory of the Russian Federation.

Following the examination of this case by the Presidium of the Highest Arbitrazh Court of the Russian Federation, two Resolutions were rendered on 2 February 2010 and 9 March 2011, which have entered into force and, according to Article 16 of the Arbitrazh Procedure Code of the Russian Federation and Article 7 of the Federal Constitutional Law No. 1-FKZ "On Arbitrazh Courts in the Russian Federation", are mandatory for the State, municipal and other authorities, as well as organizations, officials and citizens, and shall be subject to enforcement in all the territory of the Russian Federation.

As for the length of the examination by the arbitrazh Court of the case in question, which, inter alia, was determined by the debtor's petitions contesting the relevant right of the applicant, the duration of the judicial proceedings in this particular case does not negatively influence, in respect of the applicant, the running of the period of enforcement of the foreign arbitral award, which was recognized and granted enforcement in the territory of the Russian Federation by an arbitrazh court. A different approach could prevent the enforcement of a judicial act which has entered into force, against the will of the applicant, expressed through the timely recourse to judicial protection, according to the procedure established by the law. This would be against justice, which is designed, pursuant to Article 18 of the Constitution of the Russian Federation, to secure human and citizen's rights and liberties.

Consequently, the complaint of OAO Ryazan Metal Ceramics Instrumentation Plant, taking account of the circumstances of the case, does not meet the requirements for admission of complaints by the Constitutional Court of the Russian Federation provided for by Articles 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" and therefore cannot be admitted by the Constitutional Court of the Russian Federation for examination.

Based on the above and guided by Articles 43(1)(2) and 79(1) of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

ruled:

1. The complaint of OAO Ryazan Metal Ceramics Instrumentation Plant shall not be subject to further examination by the Constitutional Court of the Russian Federation as the issue submitted by the complainant does not require the rendering of a final decision in the form of a resolution provided for by Article 71 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation".

2. The Ruling of the Constitutional Court of the Russian Federation regarding this complaint is final and shall not be subject to challenge.

Unofficial translation

3. This Ruling shall be published in the Bulletin of the Constitutional Court of the Russian Federation.

Chairman of the Constitutional Court

Zorkin V.D.

No. 1479-O-O