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**The Riddle of Recognition: Russia’s Enigmatic Approach to Territoriality**

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**Introduction**

In a series of recent judgments, Russian courts have confirmed their territorial approach to international insolvencies. These cases concerned recognition of foreign insolvency proceedings (foreign insolvency judgments), originating from the Czech Republic. In one of these, the court in Moscow refused to recognize and enforce the judgment of the Regional Court of Brno, which held the Czech company, PSJ a.s., to be insolvent.[[1]](#footnote-1) The second case related to the personal bankruptcy of a Russian citizen, Ms. Terekhova. The Russian court refused to recognize the judgment of the City Court of Prague, which had established the bankruptcy of Ms. Terekhova.[[2]](#footnote-2) This Inside Story will describe the reasoning of Russian courts in both cases and explain how they fit (or, rather, do not fit) within the current international framework for recognition of cross-border insolvencies, as represented by the UNCITRAL Model Law on Cross-Border Insolvency (1997) (Model Law).

**1. The Case of PSJ a.s. and Strict Reciprocity**

The facts of the case are simple. PSJ a.s. went insolvent in the Czech Republic and filed for the recognition of its insolvency in Russia. When deciding whether to recognize the foreign insolvency judgment, the court in Moscow started the analysis by describing the relevant regulatory framework.

The first document cited by the court was the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958) and its provisions limiting recognition of foreign arbitral awards (i.e. public policy exception). This is despite the fact that the New York Convention only extends to foreign arbitral awards and is clearly inapplicable to issues of recognition and enforcement of judgments handed down by foreign (state) courts, including on matters of insolvency law. Nevertheless, it is quite common for Russian courts to (wrongly) apply the New York Convention in the *exéquatur* proceedings of foreign court judgements.[[3]](#footnote-3) When interpreting the public policy exception, the court stressed that protection of third parties, such as creditors of the insolvent debtor, is an indispensable part of the justice system and public policy of Russia. The court also noted that recognition of foreign judgments should not violate state sovereignty.

The second source relied on by the court was the Federal Law on Insolvency (Bankruptcy).[[4]](#footnote-4) Article 1(6) of this law provides that judgments of foreign courts in insolvency cases are recognized in Russia in accordance with international treaties of the Russian Federation. In case of the absence of any such treaties, judgments are recognized on the basis of reciprocity. Since there are no relevant international treaties, recognition is only possible through the reciprocity mechanism. The court interpreted the requirement of reciprocity restrictively, requiring evidence (i.e. actual cases) that the Czech courts have previously recognized Russian insolvency proceedings. Since no such evidence was presented by the debtor, recognition of the Czech insolvency judgment was refused. Notably, the court added that, in the absence of reciprocity, recognition of foreign insolvency would unduly limit the rights of creditors and the debtor (this is despite the fact that the filing for recognition was made by the debtor). The court did not clarify the said limitations.

The judgment was appealed by the debtor in the Commercial Court of the Moscow Region, which on 2 September 2019 fully confirmed its validity.[[5]](#footnote-5) The court of the Moscow Region endorsed the strict reciprocity approach and added that under Russian law, only the “winning” party (i.e. claimant, creditor) can ask for recognition of a foreign judgment – in the case at hand it was not the creditor, but the debtor (i.e. insolvency trustee) who asked for the recognition. This interpretation is overly restrictive and unwarranted. If followed, it would essentially bar all applications for recognition of foreign insolvencies, filed by debtors or their representatives.

**2. The Case of Ms. Terekhova and the Exclusive Jurisdiction of Russian Courts**

In this case, the insolvency trustee Hart & Partners v.o.s. approached the Russian court, asking it to recognize and enforce the judgment of the court in Prague holding Ms. Olga Terekhova (a Russian citizen) bankrupt. The trustee pointed out that it had a material interest in recognizing the Czech insolvency proceedings in Russia, since the Russian courts had been presiding over insolvency proceedings of Ms. Terekhova’s husband, Mr. Vladimir Timofeev. The court refused to recognize the Czech insolvency proceedings on several grounds summarized below.

First, the court reaffirmed the strict interpretation of the reciprocity requirement. It held that no evidence had been provided to prove that Czech courts recognized insolvency proceedings opened by Russian courts with respect to a Czech citizen. Thus, it was not sufficient to show that foreign courts in general recognized third country (Russian) insolvencies, but the facts of the relevant cases should be similar to or mirror each other.[[6]](#footnote-6)

Second, the court assumed that the Czech insolvency proceedings had territorial scope and did not extend beyond the national borders. As issues of Czech law are not within the scope of this piece, it is difficult to comment on this conclusion. However, it seems rather doubtful to the extent that the Prague court had applied Article 3(1) of the European Insolvency Regulation (recast)[[7]](#footnote-7) providing for the universal scope of (main) insolvency proceedings.

Third, the court reasoned that, due to the public character of an insolvency proceeding and the fact that it affects personal status, Russian courts have exclusive jurisdiction to deal with the bankruptcy of Russian citizens. Foreign insolvency judgments, which violate the exclusive jurisdiction of Russian courts, cannot be recognized in Russia as violating Russian public policy. According to the court’s reasoning, any other decision would call into question the supremacy of the judicial power of Russian courts.

**3. Concluding Remarks and Analysis**

The succinct description of these two recent cases on the recognition and enforcement of foreign insolvency judgments in Russia confirms the unwillingness of Russian courts to recognize foreign insolvencies. This hostile approach diminishes the effectiveness of foreign insolvency proceedings and could lead to a situation where, despite insolvency proceedings initiated in a foreign country, creditors are free to enforce their claims and seize property in Russia. In the absence of developed and modern rules on cross-border insolvency (e.g. addressing issues, such as communication between courts and insolvency practitioners, cross-border assistance, recognition and enforcement), Russia lags behind the international trends and deviates from best practices. Russia has not adopted (and, as far as is known, is not considering the adoption of) the Model Law and does not distinguish between main and secondary proceedings. Thus, the option of opening a local (territorial) proceeding supporting a foreign main insolvency proceeding is currently not available under Russian law.

Russia adheres to the territorial approach. The latter is especially evident from the ruling in the case of Ms. Terekhova, where the court determined that a Russian citizen could only file for bankruptcy in Russia and that foreign proceedings are not acceptable. This is irrespective of the person’s centre of main interest (COMI), a concept still foreign to Russia’s legal order. Somewhat self-contradictorily, Russian courts do regularly open insolvency proceedings with respect to foreign citizens having assets, creditors and other links in Russia.[[8]](#footnote-8) Thus, Russian courts extend their own jurisdiction to foreign citizens, while at the same time they do not recognize or grant such an extension to foreign courts. Therefore, it is likely that a similar logic would be applied to Russian companies undergoing insolvency proceedings in foreign countries – their insolvency has a serious risk or the high probability of not being recognized in Russia.

Interestingly, while foreign individuals can be subject to bankruptcy proceedings in Russia, the Supreme Court of the Russian Federation, in the case of Andreas Neocleous & Co LLC, has ruled that foreign companies, even with strong ties in Russia, cannot access insolvency proceedings in Russia.[[9]](#footnote-9) In that case, concerning a Cypriot-registered entity with assets and creditors in Russia, the court reasoned that Russian insolvency law only extends to legal entities registered in Russia. The reasoning of the court is not persuasive.

The table below summarizes the approaches adopted by Russian courts in international insolvency cases. It relates to the matters of international insolvency jurisdiction and recognition of foreign insolvency judgments. However, since the case law is not set in stone and some of the judgments described above may still be appealed, the information in the table may be subject to change.

|  |  |  |
| --- | --- | --- |
|  | Insolvency in Russia | Insolvency in third country |
| Russian citizen | Yes | No |
| Russian company | Yes | Most probably No |
| Foreign citizen | Yes (in case of strong ties with Russia) | Yes (recognition based on strict reciprocity) |
| Foreign company | No | Yes (recognition based on strict reciprocity) |

To sum up, Russian insolvency law represents a complex system with different rules applied to companies and individuals, Russian and foreign, a system that is difficult to explain, a system rigged with internal inconsistencies and unclear logic. This can be explained by the fact that, in Russia, there is no comprehensive framework akin to the Model Law, which would provide for predictable and efficient rules for resolution of international insolvencies, based on the principles of universalism (or modified universality, to be more precise) and comity.

1. Decision of the Commercial Court of Moscow from 24 June 2019, Case No. A40-101054/19-141-932. [↑](#footnote-ref-1)
2. Decision of the Commercial Court of Sverdlovsk Region from 14 July 2019, Case No. A60-29115/2019. [↑](#footnote-ref-2)
3. See M. Samoylov, The Material Scope of the 1958 New York Convention: Russian Courts Make It Broader, Kluwer Arbitration Blog, 25 September 2018. [↑](#footnote-ref-3)
4. Federal Law No. 127-FZ “On Insolvency (Bankruptcy)” from 26 October 2002. [↑](#footnote-ref-4)
5. Decision of the Commercial Court of the Moscow Region from 2 September 2019, Case No. A40-101054/2019. [↑](#footnote-ref-5)
6. Similar interpretation of the reciprocity requirement was given in the case of Mr. Vladimir Kekhman, a well-known Russian businessman, who sought a bankruptcy order in the UK and then (unsuccessfully) tried to recognize it in Russia. In that case Russian courts asked for the evidence that English courts had recognized insolvency proceedings opened with respect to a UK citizen by a Russian court (which was clearly impossible to do). For more on this case see INSOL Europe Inside Story from November 2016. [↑](#footnote-ref-6)
7. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. [↑](#footnote-ref-7)
8. For the first such cases see Decision of the Commercial Court of Yamalo-Nenets Autonomous District from 30 June 2016, Case No. А81-6187/2015; Ruling of the Commercial Court of Moscow Region from 8 July 2016, Case No. А40-186978/15-44-335Б. [↑](#footnote-ref-8)
9. Decision of the Supreme Court of the Russian Federation from 12 March 2018, Case No. 305-ЭС18-552. [↑](#footnote-ref-9)