

Legal Grounds for Not Recognizing Arbitration Decisions Favoring Sanctioned Russian Companies

The Supreme Court of Ukraine Decided that \$250 Million Gas Debt of Odessa Port Plant Disrupts Public Order

The Supreme Court of Ukraine refused to recognize a decision made by the Stockholm Arbitration Court. This decision involves a gas debt, implying that the Odessa Port Plant (OPZ) might not have to pay over 250 million U.S. dollars to a Cypriot company, which is connected with a sanctioned Russian entity.

Ukrainian courts refuse to enforce foreign arbitration decisions if they involve state security issues, environmental dangers, and a sanctioned company during the ongoing war with Russia. The courts reflect a complex interplay of national security, international legal commitments, and the principles of public order.

The Supreme Court's decision is based on two main reasons: environmental and economic threats and the involvement of sanctioned Gazprombank. According to the court, recognizing and enforcing the arbitration decision would contradict Ukraine's public order.

Public order is a concept without a specific legal definition, but the Supreme Court provides interpretations. The concept includes fundamental principles like state independence, integrity, autonomy, and inviolability of constitutional rights and freedoms. Courts may refuse to recognize and enforce arbitral decisions if they contradict the state's public order. Ukrainian courts have applied this concept in various cases where transactions infringed upon public, economic, and social foundations of the state, including illegal use or transfer of communal, state, or private property and unlawful land and natural resource dealings.

Therefore, in this case, the arbitration decision can not be recognized due to the environmental and economic security of Ukraine in the context of public order. OPZ is a state-owned enterprise crucial for Ukraine's economy and security. It handles hazardous operations and must take measures to prevent and manage accidents, protecting people and the environment. The privatization of OPZ was in progress, and the State Property Fund hasn't agreed to use its assets to pay off the arbitration debt.

In addition, payments from enforcing the arbitration decision in Ukraine would ultimately benefit Gazprombank, a Russian entity named on Ukraine's sanctions list. The Supreme Court determined that the plaintiff company Ostchem Holding Limited is in debt to Gazprombank and has transferred its rights from several supply contracts to the bank.

The main concern of this decision might be the Right to Peaceful Enjoyment of Property, guaranteed by the First Protocol of the European Convention of Human Rights. However, the Supreme Court justifies its intervention in this right based on three criteria: legal basis, public interest protection, and the proportionality of the intervention.

The decision is precedential for future court cases that involve sanctioned companies listed in national and foreign compliance guides.