

# The Statistical Analysis of the Application of the New York Convention in Russia

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The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York) celebrated its 60<sup>th</sup> anniversary in 2018 ("**Convention**"). Since its inception, **159 Contracting States** have joined the Convention. The USSR ratified the Convention on 22 November 1960. The Russian Federation, as a successor of the USSR, continues to be a Contracting State.

### The NYC Study

There is a significant body of legal research on the application of the Convention in Russia. However, the Russian Arbitration Association undertook to look at the application of the Convention from a statistical point of view. The Working Group of the Russian Arbitration Association has analyzed all cases decided in the past **10 years**, which relate to the application of the Convention. The study represents the first time when the Convention is being studied solely from the angle of Russian case law ("**NYC Study**"). The full Study is available [here](#).

The NYC Study was commenced over a year ago and comprised three (3) stages. To begin, the Working Group identified approximately **700 court rulings** of the first, appeal and supreme instances, in which the courts applied Article V of the Convention or related national legal norms in determining the recognition and enforcement ("**R&E**") of the foreign arbitral award. The approximately 700 court rulings were deducted to 472 R&E cases arising out of 472 foreign arbitral awards. Each court ruling was analyzed in accordance with **45 parameters**, such as date of the arbitral award, date of the R&E application, date of the first instance ruling, number of instances, results per instance, date when the R&E was granted or rejected, nationality of the claimant, names of the parties, seat of the arbitration, arbitration rules, applicable law, subject matter of the dispute, awarded amounts and currency, number and names of arbitrators, number and names of state court judges in each instance, geography of state courts, requested and granted grounds under Article V of the Convention, and the final result of the R&E application. All extracted data were entered into a master table, which comprised over **21,000 elements in total**.

To ensure accuracy, the case search was done through two legal databases, which were kad.arbitr.ru and Consultant Plus. The cases have been cross-checked to ensure that the gathered data is accurate and mostly complete. It should be noted that the existence of publicly available case law databases in Russia is, in itself, a great achievement because it improves court's transparency and makes case law accessible to anyone.

The second stage of the NYC Study focused on coding the data to make it machine readable. Most of

the data groups were assigned binary codes comprising the digits 1 and 0. Various combinations of these digits made a computer read the data.

At the final stage, we built formulas for correlated data and visualized them. By applying formulas to the binary codes we could extract information from a broad range of data types. Practically, these formulas enable us to describe the court practice and tendencies in the application of the Convention in Russia. For example, we can show how amounts in dispute affect Russian court decisions, which courts and judges are arbitration friendly, the judges whose rulings are successfully appealed, and the ratio of successful cases *per* instance.

## **The NYC Study Results in a Nutshell**

- The NYC Study reveals that the Convention has been widely invoked by the parties and courts of all instances in Russia in the past 10 years. In total, there were 472 R&E applications, 378 of which were granted, 45 rejected and 49 applications were not considered due to various reasons, which were mostly related to the procedure.
- The NYC Study shows that Russian courts are arbitration friendly – in various years, 80 to 97% of all R&E applications were granted.
- During the period 2008 to 2017, the most used Article V grounds were: violation of public policy (Article V2(b)) – 42 cases, the lack of proper notice or inability to present the case (Article V1(b)) – 34 cases, and excess of mandate by arbitrators (Article V1(c)) – 13 cases.
- Most disputes arose out of sale of goods contracts (341 cases); services agreements (39 cases); and various financial agreements (30 cases).
- The awarded amounts in approximately 50% of the cases comprised less than EUR 50,000, in about 35% of all cases were less than EUR 1 million, in about 12% of the cases were from EUR 1 to 15 million, and in 5% of cases – over EUR 15 million.
- Distribution of claimants by country was as follows: Ukrainian (196), Belarussian (101), Kazakhstani (15), Latvian (13), German (11) and Moldovan (11).
- The most used arbitration rules were those of the ICAC Ukrainian CCI (193 cases), IAC Belarussian CCI (95), LCIA (17), SCC (16), ICC (13) and LMAA (12).
- The hit ratio of cases finally decided in the first instance, meaning that they were not subsequently appealed, was 77,6% of all cases.
- The NYC Study shows that the higher the instance, the lower the ratio of recognized and enforced arbitral awards. About 89% of the R&E applications were granted in the courts of the 1st instance; 61% of the R&E applications were approved by the courts of the 2nd instance and there was a 60% hit ratio in the supreme instance.
- The total value of claims sought under the R&E applications in the period 2008 to 2017 was EUR 8,220,758,910. Russian courts enforced the claims for EUR 4,771,021,582 or, in other words, 58% of all claimed amounts.
- In the reviewed years, the average duration of the R&E application process in Russian courts was 6 months.
- From time to time, the Supreme court provides case law overviews, which explain to the lower courts how to apply certain legal provisions. For example, in 2013, the Russian Supreme Arbitrazh (Commercial) Court published the Information letter No.156, in which it explained how to apply the concept of public policy in R&E applications. As a result, the number of court granted public policy motions dropped to 0 in the following years, until 2017.
- In terms of improving the case law, the courts should consider giving a more detailed account of the invoked Article V grounds, which includes an explanation why such motions were granted or rejected by the court. This will contribute to the development of the case law and will increase the predictability in the application of the Convention.

This is a whole new place to go with numbers, but the NYC Study is just scratching the surface. As

more data comes in, we now have a better context to explain what these numbers really mean by comparing the cases, judges, outcomes and many other factors. In a few years, this NYC Study can be used to consider how things have changed in Russia by comparing the measurements and conclusions drawn in this study. This work will continue with the annual updates published at [www.newyorkconvention.ru](http://www.newyorkconvention.ru).