GILS

GRATA INTERNATIONAL LEGAL SERIES

DISPUTE RESOLUTION

The GRATA International Legal Series (the "GILS") is a distinctive legal handbook, offering essential legal insights and practical tips for conducting business across jurisdictions where GRATA International operates.

Legal experts within the GILS framework have meticulously prepared an overview of the pivotal cases across a spectrum of legal areas.

The third edition of GILS is dedicated to dispute resolution in 11 jurisdictions: Azerbaijan, Belarus, Georgia, China, Kazakhstan, Moldova, Mongolia, Russia, Turkey, Uzbekistan, Ukraine.

In this edition of GILS, you will find a digest of intriguing cases from various jurisdictions, carefully selected to highlight notable aspects of the legal landscape.

GRATA International team successfully represents the interests of clients at all stages of dispute resolution of various specialisations, including corporate disputes, commercial disputes, disputes with tax authorities, etc. Our lawyers have considerable experience in solving these issues in the countries where GRATA International operates.

Content

AZERBAIJAN

CASE №1:

Fidan Vahabova
Senior Associate

Sarkhan Mammadov
Associate, Attorney

The client, a company specialising in the production of casing and other industrial pipes in the oil and gas industry, entered into a contract with a company registered in Azerbaijan. In the course of their cooperation, the company registered in Azerbaijan had incurred a debt.

As the dispute was not resolved through negotiations, the client, in accordance with the previously concluded contract, applied to the Moscow Arbitration Court for resolution of the dispute, which, in turn, issued an award for recovery of the debt.

In order to recognise and enforce the award in Azerbaijan, the client applied to GRATA International Azerbaijan. Our lawyers evaluated the available documents and requested additional documents in accordance with the requirements of the law and the practice of such cases.

The specificity of the case was that when it comes to the recognition of foreign awards in Azerbaijan, one should be very selective in preparing the documents attached to the suit.

GRATA International Azerbaijan represented the client before the Supreme Court of the Republic of Azerbaijan in a case regarding the recognition of an award of the Moscow Arbitration Court in Azerbaijan for debt recovery against a local company. The representation of the client was successful and the Supreme Court of the Republic of Azerbaijan issued a favourable decision on the recognition of the Moscow Arbitration Court award in the territory of the Republic of Azerbaijan.

Currently we are actively working on the enforcement of this decision.

CASE №2:

Royal İbrahimli
Counsel

The client is a housing and construction cooperative registered in Azerbaijan.

In this case, several residents who had entered into a service agreement with the client were systematically omitting to pay utility bills and carrying out unauthorised construction works on the premises, despite the requirements of the existing agreement.

The client approached Grata International Azerbaijan to force these tenants to pay the arrears. The initial claim was to the court of first instance, where the decision was in favour of the residents.

As a consequence, an appeal had to be initiated, which resulted in a change of the decision in favour of the client. For this purpose, we succeeded in getting the court to involve experts, who prepared an independent opinion with the aim of finding out and determining the average prices for housing and communal services in the administrative area.

According to the court decision, the tenants were obliged to pay the outstanding utility bills and dismantle the unauthorised constructions, thus bringing them into compliance with the terms of the agreement between the housing and construction cooperative and them.

BELARUS

CASE №1:

Alexander Korsak
Partner

Violetta Liudchyk
Associate

We were approached by a large producer of seed hybrids from the Republic of Moldova (hereinafter – the Client) regarding the recovery of a debt for the delivered goods from a Belarusian counterparty – an agricultural enterprise. The amount of the debt, including penalties for late payment exceeds EUR 400 000.

Pre-trial dispute resolution measures were unsuccessful, and the case was referred to the court.

In the course of the case, the debtor raised objections about the quality of the goods (delivery of expired seeds), which required an expert examination. The debtor also filed counterclaims due to the fact that the Client did not deliver the entire volume of goods under the contract.

We managed to prove that the quality claims were not filed and formalised in accordance with the established procedure, which deprives the debtor of the right to refer to them. Regarding claims on the volume of deliveries, we proved that the debtor did not send requests for the delivery of the entire volume of goods, was not interested in receiving them, and was not ready to pay for them.

By the court's decision, the amount of the principal debt, as well as a part of the penalty and legal expenses were recovered from the debtor in favour of the Client.

The decision was appealed in appellate and cassation instances, but remained in force.

Enforcement proceedings are underway.

CASE №2:

Dmitry Viltovsky
Managing Partner

Lizaveta Tsianiuta
Junior Associate

A mortgage agreement was concluded between the Bank and the Client (company that is a leader in the market of spare parts and equipment supplies for machine-building enterprises) to secure the obligations of the Borrower, a third party under the loan agreement. The Client and the Borrower are members of the same group of companies, but have no contractual legal relations in connection with the mortgage agreement.

Due to the Borrower's failure to fulfil the obligations under the loan agreement, the Bank applied to the Client (Pledgee) with a request to fulfil its obligations under the loan agreement.

As it turned out, the amount of obligations under the loan agreement exceeded the value of the property under the mortgage agreement. The Bank demanded that the Client pay the entire amount of the debt, including the amount exceeding the value of the mortgaged property.

Pre-trial negotiations did not lead to the settlement of the situation. The dispute was referred to court for resolution.

The Bank's position was that the Pledgee was a joint debtor obliged to be liable for all obligations not fulfilled by the Borrower under the loan agreement.

The Client provided its legal position and interpretation of the terms and conditions of the agreement, pointing out that recovery of the debt from the Client in excess of the value of the pledged property is inadmissible due to the legal nature of the mortgage agreement, the real intention of the parties when concluding the agreement.

As a result of additional negotiations involving a conciliator and a mediator, the parties settled the dispute and entered into a mediation agreement consistent with the Client's position that it was liable only up to the value of the pledged property.

CASE №3:

Alexander Korsak
Partner

Anton Benko
Junior Associate

A construction contract was concluded between a Client, resident of Belarus (Contractor) and Customer - resident of Kazakhstan.

Upon the fact of work performance, the parties drew up an act of rendered services and fixed the amount of debt.

Pre-trial negotiations did not lead to the repayment of the debt. The case was referred to court. The court satisfied the claims for debt recovery.

The court decision rendered in the simplified procedure was cancelled on the debtor's complaint.

In the course of consideration of the dispute in the general procedure, the debtor raised objections about the lack of proper executive documentation, violation of requirements to primary accounting documents and failure of authorised employees of the debtor to agree on the documents.

We managed to provide legal and factual substantiation refuting the debtor's arguments.

As a result, the amount of the debt, penalty, state fee and representation expenses were recovered in full in favour of the Client.

CHINA

CASE №1:

Gulnur Nurkeyeva
Managing Partner,
Head of China office

Akzhan Sargaskayeva
Counsel

With the expert assistance of GRATA International China lawyers, a leading construction enterprise in the People's Republic of China, being a member of Consortium agreement (Client) in the project for the reconstruction of a section of the road of the republican significance successfully overcame substantial legal challenges related to the failure of Bank CenterCredit JSC to fulfil its obligations to pay under the bank guarantee, following the non-fulfillment of contractual obligations by another consortium partner.

Due to the failure of one of the parties to the Consortium Agreement to fulfil its obligations under the agreement, the Client applied to the Bank with a request to pay the amount of the bank guarantee in the amount of approx. USD 9.5 million, to which the Bank refused.

In case of filing a monetary claim, for instance, to recover amounts under a bank guarantee, the state fee for legal entities is 3% of the claim amount, but no more than 20 000 MCI (approximately USD 166 000). For non-monetary claims, the state fee is 0.5 MCI (approximately USD 5).

In this regard, GRATA International has chosen the strategy of filing a non-monetary claim in court to recognize the refusal to perform obligations under the bank guarantee as illegal and to compel execution, and only in the event of 1. the satisfaction of non-monetary claims by the court, 2. and the Bank's failure to fulfil its obligations under a court decision on a non-monetary claim that has entered into legal force, 3. to file a monetary claim in the court.

To address this issue, the Client, under the legal support of GRATA International China, initiated legal proceedings to challenge the Bank’s refusal as unlawful and to compel the performance of obligations under the bank guarantee. Despite the initial court ruling in our Client's favour, non-compliance by the Bank necessitated further legal action of a monetary nature to safeguard the Client’s rightful claims and interests.

The Specialized Interdistrict Economic Court of Astana city deliberated on this case and, on December 15, 2023, rendered a decision that predominantly favoured our client. Later on March 7, 2024, the Court of Appeal issued a decision to dismiss the Bank's appeal. The court ordered the Bank to pay the full amount under the bank guarantee, alongside a penalty, reimburse legal fees, and state duties. The total amount ordered for payment by the court is approximately USD 10 million.

The legal prowess and strategic litigation approach employed by GRATA International China lawyers were instrumental in substantiating the Bank's breach of obligations and the penalties accrued from the moment of the initial claim under the bank guarantee. This court decision mandated the enforcement of contractual commitments by the Bank.

CASE №2:

Gulnur Nurkeyeva
Managing Partner,
Head of China office

Akzhan Sargaskayeva
Counsel

This case centres around a dispute arising from a PPP contract for the construction and operation of a kindergarten in Astana signed between the Public Partner and the construction company (“Client” or “Private Partner”).

The primary issue in the dispute was the lack of essential engineering infrastructure, specifically a transformer substation and an electricity power cable line, on the plot provided. This led to significant project delays, increased costs, and loss of profit.

In addressing this legal challenge, the Private Partner was represented by GRATA International Beijing lawyers, whose expert legal representation was crucial in navigating the intricate legal landscape of the Republic of Kazakhstan, particularly in handling cases under the jurisdiction of the AIFC Court. The Court of First Instance of the AIFC, guided by the clauses of the PPP Contract and the laws of the Republic of Kazakhstan, undertook the consideration of the dispute.

The Private Partner, with the legal assistance of GRATA International China lawyers, argued that the land provided by the Public Partner for the construction of the kindergarten was deficient in critical engineering infrastructure as stipulated by the contract. This oversight by the Public Partner was deemed a breach of contract by the Private Partner, leading to increased Compensation of Investment Costs (CIC), additional investment costs, lost profits, and other losses due to non-performance.

The AIFC Court resolved that the Public Partner had failed to fulfil its obligations to provide the site within the stipulated time frame and to ensure the site was connected to the grid connection point.

GRATA International China’s representation was vital in securing a favourable outcome, which resulted in the AIFC Court upholding the claims of the Client, ordering the Public Partner to pay the Private Partner the sum of approx. USD 4 million.

CASE №2:

Gulnur Nurkeyeva
Managing Partner,
Head of China office

Akzhan Sargaskayeva
Counsel

In the arbitration case overseen by the China International Economic and Trade Arbitration Commission (CIETAC), a contractual dispute surfaced between Hong Kong Dragon Electronics Ltd. (the "Plaintiff" or the “Client”) and Korkem Telecom LLP (the "Defendant"). The core of the dispute centred on a sales and purchase agreement, under which the Plaintiff committed to supplying specific equipment. Despite receiving an initial advance payment from the Defendant, a remaining balance of USD 208 996 was not paid. Consequently, the Plaintiff initiated arbitration proceedings to recover the outstanding funds.

The Plaintiff's interests were adeptly represented by GRATA International China.

The agreement in question did not specify an applicable law clause, leading the parties to agree on the application of the Laws of the People's Republic of China (PRC) for adjudicating their case. The arbitration was held in Beijing, featuring detailed exchanges of evidence and thorough cross-examination processes.

The Plaintiff argued that the goods were delivered in complete compliance with the agreement's terms. In contrast, the Defendant challenged the quality of the received goods, claiming they were substandard.

The arbitration tribunal, after careful consideration of the evidence and arguments presented, affirmed the validity of the agreement. It rejected the Defendant's arguments for contract termination due to the lack of substantial proof regarding the poor quality of goods.

The arbitration tribunal mandated the Defendant to pay the remaining balance of USD 208 996 and additionally compensate the Plaintiff for legal representation costs and arbitration fees, totaling USD 241 581.

This arbitration award was not only pronounced but also recognized and fully enforced in Kazakhstan.

This case underscores the pivotal role of expert legal representation in international arbitration and the enforcement of arbitral awards. GRATA International China's expertise in navigating through complex legal and procedural nuances was instrumental in securing a favourable outcome for the Client.

GEORGIA

CASE №1:

GRATA International Georgia

Decision #AS-186-2020 of the Supreme Court of Georgia from December 2022

GRATA International client (hereinafter "Appellant" or "Company") is a locally incorporated entity with participation by foreign citizens R.W. holding 89% shares in the Company and H.G. (hereinafter "Defendant") holding 11% shares in the Company.

Defendant filed a motion on 05.03.2015 with the City Court of Tbilisi for applying interim measures prior filing the claim against R.W. With effect from 06.03.2015, the said motion was satisfied, the Company was banned to alienate its immovable property and R.W. was restricted to execute his shareholder rights on the General Meeting of shareholders.

As there was a shareholder agreement with an arbitration clause in it, the Tbilisi City Court suspended the dispute due to lack of jurisdiction.

Later the Company filed the claim against the Defendant to compensate the damages caused by the interim measures applied to the Company immovable property.

The case was precedential for the Supreme Court of Georgia as it interpreted Article 199.3 of the Civil Procedural Code of Georgia widely providing a ground not only to the claims on compensation of damage caused by dismissal of those claims under which the interim measures were introduced, but also to the following cases:

- Suspension of a case due to lack of jurisdiction as parties agreed on arbitration.
- Dismissal of claim by a claimant.
- Withdrawal of claim by a claimant.

The Supreme Court of Georgia also indicated that in case of "procedural good faith" violation a ground for claim for compensation of damage caused by an interim measure is Article 992 of the Civil Code of Georgia stating that "a person who unlawfully, intentionally or negligently causes damage to another person shall compensate the damage to the injured party".

KAZAKHSTAN

CASE №1:

Askar Konysbayev
Partner

Zhandarbek Ramazan
Counsel

Gani Sagimbekov
Associate

Sukhrob Issakhanov
Senior Associate

We have been advising and implementing the bankruptcy procedure of Adai Petroleum Company LLP (APC) in Kazakhstan. We acted on behalf of the shareholders of APC. Both companies invested significant amounts in APC with the aim of developing an oilfield in Kazakhstan. However, the development project had not yielded results and it was decided to close the project and liquidate APC. First, we represented the clients and APC in the court proceedings requesting declaration of APC's bankruptcy. We faced a challenge from local tax authorities who opposed the bankruptcy of APC. However, we were able to obtain positive result and the judgment of APC's bankruptcy entered into effect. The project which lasted almost two years, is now complete and the company has been discharged from the trade registry.

CASE №2:

Askar Konysbayev
Partner

Zhandarbek Ramazan
Counsel

Gani Sagimbekov
Associate

Sukhrob Issakhanov
Senior Associate

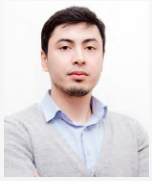
We acted on behalf of LPG Storage Park LLP in a landmark antitrust dispute against Kazakh Competition Authority. The Park, which is located in Atyrau, has been subject to a major antitrust investigation after the January 2022 unrest in Kazakhstan over the gas prices. The Competition authority accused the Park of setting monopolistically high prices for gas storage. We have been able to cancel the order of the Competition Authority on the grounds of formal and substantive violations in the order. The Competition Authority, among other things, wrongly calculated the price which had not included the expenses. Also, the calculations had not taken into account that the Park was a monopoly only in the Atyrau region but not in the whole of Kazakhstan.

CASE №3:

Askar Konysbayev
Partner

Zhandarbek Ramazan
Counsel

Gani Sagimbekov
Associate



Sukhrob Issakhanov
Senior Associate

We continue representing our long-term client, a construction company in the oil and gas sphere, KazStroyService (KSS) in an arbitration under CIETAC Rules in China. The dispute arose with the client's contractor who alleged non-payment under the supply of the valves and brought a claim in arbitration. We filed a counterclaim contending that the valves had been defective. Our client was forced to buy the valves from a different supplier due to the defective valves from his contractor. The dispute was also old which is why there arose a question of the contractor's claims being barred.

MOLDOVA

CASE №1:

Igor Popa
Senior Partner

The lawyers of GRATA International Moldova represented the interests of the creditors "Toto Construzioni" and "Taddei" SpA and filed a request in court for the recognition and enforcement in the territory of the Republic of Moldova of the arbitral award issued on March 10, 2020, by the International Ad-Hoc Arbitral Tribunal based in Paris, France, in the arbitration case between "Toto Construzioni Generali" SpA and "Taddei" SpA against the State Road Administration. The court decided to recognize the arbitral award of the International Ad-Hoc Arbitral Tribunal, based in Paris, France, issued on March 10, 2020, in the arbitration case between "Toto Construzioni Generali" SpA and "Taddei" SpA against the State Road Administration in the territory of the Republic of Moldova.

The court also approved the enforcement of the arbitral award on the territory of the Republic of Moldova and issued an enforcement order for the collection from the debtor's account, the State Road Administration, to the benefit of the creditors "Toto Construzioni Generali" S.p.A and "Taddei" S.p.A, of the amount of EUR 365 096,90 as financial costs under the contract for the delayed certification of completed works; the amount of EUR 601 248,56 as unjustified delay damages under the contract; the amount of EUR 372 323,36 as interest accumulated until the date of the arbitral award; and the collection of interest from the date of the arbitral award.

MONGOLIA

CASE №1:

Bolormaa Volodya
Partner and
Executive Director

On December 23, 2022, "A" LLC (or the Client of GRATA International Mongolia law firm) initiated legal proceedings in the court of first instance seeking compensation of MNT 426 068 124,50 for breach of contract obligations related to services provided to "B" LLC, along with an additional MNT 17 696 737,43 as fines, totaling MNT 443 764 861,93.

On the other hand, "B" LLC filed a counterclaim seeking to invalidate a portion of the service agreement and the service payment amount listed in the appendix, which is denominated in USD. Additionally, they aim to compensate MNT 176 349 041 for damages resulting from the invalid agreement. The case was resolved in favor of "A" LLC by both the Civil Court of First Instance and the Court of Appeal.

Case Summary: "A" LLC fulfilled its contractual obligations by providing timely work and services as per the service agreement with "B" LLC. Despite submitting work reports and invoices accordingly in a timely manner, "B" LLC failed to make the payment within the agreed period or fulfill its contractual obligations.

On the contrary, "B" LLC filed a response with the court of first instance, contesting the portion of the aforementioned amount, or MNT 99 298 822,23 for transportation fee, along with the associated penalty. Furthermore, "B" LLC argued that the payment execution clause outlined in the service agreement between the parties violated the "Law on Execution of Payments in National Currency" or that the parties have agreed to the service fee in USD and agreed to pay in MNT (local currency). Consequently, "B" LLC deemed the agreement invalid and filed a counterclaim to the court of first instance for damages because of the depreciation of USD or currency of services agreement during the term of the Agreement. In this regard, "A" LLC filed a response to the court of the first instance, considering that the counterclaim demand made by "B" LLC is groundless, requested to dismiss the entire counterclaim.

Court judgment: After a thorough examination of the claims presented by both parties, the Court of First Instance of Civil Affairs rendered its decision as follows:

The portion of "A" LLC's claim for MNT 422 922 714,54 was satisfied, while the remaining claim of MNT 20 842 147,39 due to lack of written evidence and the counterclaim brought by "B" LLC against "A" LLC were dismissed respectively.

Subsequently, "B" LLC initiated an appeal with the court of appeals contesting the decision of the court of first instance. Nevertheless, upon a comprehensive review of the case, the court of appeals dismissed the appeal initiated by the "B" LLC and affirmed the decision of the first instance court.

RUSSIA

CASE №1:

Pavel Balyuk
Counsel, Attorney

A21-7789/2021

The Government of the Kaliningrad Region made a decision to seize a 3 300 square metre land plot from the Client. The amount of compensation was determined at RUB 220 000, which did not correspond to the actual value of the land plot. Despite the type and category of the land plot being withdrawn as agricultural land in the Unified State Register of Legal Entities, in fact, the general plan and ZPZ for the land plot established the category: residential land, type of permitted use: for medium-storey residential development. The Client wanted to receive commensurate compensation for the withdrawn land plot.

GRATA International Russia (St. Petersburg) was involved in the project at the appeal stage. The Client lost the court of first instance.

The result the Client wanted was achieved in the court of cassation. The Court of Cassation cancelled the judicial acts and sent the case for a new examination.

At the new hearing, the amount of compensation was increased 100 times and determined to be almost RUB 21 000 000!

GRATA International Russia (St. Petersburg) lawyers managed to change the approach of the courts to the consideration of the issue of establishing the amount of compensation for the withdrawn land plot and take into account not only the characteristics of the land plot from the Unified State Register of Land Plots, which was still the focus of the courts in view of the outdated practice, but also take into account the factual circumstances that establish the value and marketability of the withdrawn real estate object (for example, the current general plan and ZPZ with different characteristics than in the Unified State Register of Land Plots).

So far, this has only been the case in a Constitutional Court ruling, but the issue there concerned the development of infrastructure from the date of the decision to seize to the actual seizure, which is different from the dispute at hand.

CASE №2:

Svetlana Kudryashova
Counsel, Attorney

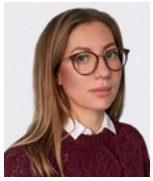
Rosprirodnadzor sued the Client (a Russian subsidiary of a global brand in the construction materials industry) for recovery of environmental impact fees in the amount of RUB 5 000 000 due to the Client's failure to apply an increasing coefficient when calculating the fee.

As a result of this dispute (A56-21808/2022) GRATA International Russia (St. Petersburg) managed to prove to the court that the Client's enterprise disposed waste within the established limits on the basis of the document on approval of waste generation standards and limits for their disposal No 26-7852-Q-15/20-P, valid from 18.05.2015 to 05.02.2020, which was still in force at that time, so the claims of Rosprirodnadzor are not justified.

CASE №3:

Dmitry Samigullin
Managing Partner

Aleksandra Levenkova
Partner



By the decision of the Arbitration Court of the Samara Region dated November 28, 2023 in case No. A55-27380/2022, the amount of unjust enrichment in the amount of RUB 21 888 160,75 was recovered from the Ministry of Internal Affairs in favour of the Client, as well as the cost of paying state duty in the amount of RUB 131 302.

The decisions of the Eleventh Arbitration Court and the Arbitration Court of the Volga District upheld the judgement and the complaints of the Ministry of Internal Affairs.

Details: On March 17, 2022, a State contract for the supply of goods for state needs (hereinafter referred to as the Contract) was concluded between the Federal State Institution "Volga District Directorate of Material and Technical Supply of the Ministry of Internal Affairs of the Russian Federation" (hereinafter referred to as the Ministry of Internal Affairs) and the Limited Liability Company "STK" (hereinafter referred to as the Client).

Under this contract, the Client agreed to supply desktop PCs and laptops. The contract price is RUB 227 977 686.

In order to ensure the execution of the Contract, Sberbank PJSC (hereinafter referred to as the guarantor) issued an Independent Guarantee (hereinafter referred to as the Guarantee).

In accordance with the terms of the bank guarantee, at the request of the plaintiff, the guarantor accepted the obligation to pay at the request of the defendant, an amount equal to the price of the Contract, but not exceeding RUB 23 028 49,18, in case of non-performance or improper performance

the plaintiff of obligations under the Contract, including obligations to return the advance payment, obligations during the warranty period, obligations to pay penalties (penalties, fines) provided for in the Contract, obligations to compensate for losses (if any).

Due to sanctions restrictions, the Client will not be able to deliver the goods and the Ministry of Internal Affairs exercised the right provided for by the bank guarantee and turned to the guarantor for payment of funds in full, that is, in the amount of RUB 23 028 049,18. The guarantor fully satisfied the defendant's demand on August 10, 2022.

Subsequently, the guarantor presented the Client with a demand for reimbursement of the funds paid under the guarantee. The client reimbursed this amount.

Believing that the Client thereby suffered losses, and on the side of the Ministry of Internal Affairs there was unjust enrichment equal to the amount of money received under the guarantee, the Client appealed to the Arbitration Court of the Samara Region to the Ministry of Internal Affairs to recover the amount of unjust enrichment in the amount of RUB 23 028 049,18 rubles.

By the decision of the Arbitration Court of the Samara Region dated November 28, 2023, the claim was partially satisfied: the amount of unjust enrichment in the amount of RUB 21 888 160,75 was recovered from the Ministry of Internal Affairs in favour of the Client, as well as the cost of paying the state duty in the amount of RUB 131 302.

This court case is classified as difficult to rank in the system of Russian arbitration courts.

Its complexity lies in determining the range of legal circumstances that are relevant to the case and in the heterogeneous judicial practice on these circumstances:

- whether, in principle, unjust enrichment arises on the side of the state customer in the circumstances of this case;
- in what cases could the state customer take advantage of the guarantee and the limits of its interpretation specifically in our case (what was agreed upon by the parties?);
- is it possible to recover legal costs from the losing party if the losing party (Ministry of Internal Affairs) is by force of law exempt from paying state fees as a state body.

In addition, the recovery of a significant amount of RUB 21 888 160 from a government body in the absence of contractual grounds, based on tortious obligations, is a rare judicial practice in Russia.

Lawyers from the Samara office of GRATA International supported this legal case in full from the very beginning:

- a legal position on the case and a judicial strategy were formed;
- all necessary procedural documents were prepared during the consideration of the case and the Client's interests were represented in courts of all instances.

Note: based on the materials of this court case, an article was published in the media "Advocatskaya Gazeta" about the consideration of these cases (co-authors are lawyers of the bureau participating in this case) https://www.advgazeta.ru/pechatnaya-ag/403/

TURKEY

CASE №1:

Ali Ceylan
Senior Partner

In 2018, our client ("Foreign Client"), a Liechtenstein-based investment company, granted a loan of USD 1 000 000 to a Turkish Company ("Turkish Company"), which has investments in the field of geothermal energy, to be used in energy investments.

The Turkish Company did not use the loan received from the Foreign Client for energy investments in accordance with its purpose, furthermore, they did not repay the loan when it was due.

During the negotiations of the Foreign Company with the Turkish Company officials regarding the repayment, the Turkish Company officials rejected the reimbursement requests without any reason and the matter was then referred to the GRATA International Turkey's Istanbul Office.

When the lawyers of the GRATA International Turkey's Istanbul Office analysed the Loan Agreement, they found out that Vaduz (Liechtenstein) courts had jurisdiction in the agreement. Since it would take a long time to initiate the lawsuit in Liechtenstein due to the said jurisdiction clause and to have the judgement from there recognised in Turkey, the lawyers of the GRATA International Turkey's Istanbul Office researched judicial precedents in order to find a way to bypass the jurisdiction clause in the Agreement and bring the case directly in Turkey.

In their research, the lawyers of the GRATA International Turkey's Istanbul Office found that, under Turkish law, bankruptcy proceedings may be initiated against a debtor (even if the debtor owes only 1 Turkish Lira and has the financial structure to pay it) and subsequently a bankruptcy case may be filed and that bankruptcy cases are subject to the rule of absolute jurisdiction (the courts at the headquarters of the debtor company are competent) and that this jurisdiction overrides the jurisdiction clause agreed in the contract.

Thereupon, a bankruptcy case was filed against the Turkish Company on behalf of the Foreign Client. With the expert report received in the said Bankruptcy File, the Client's receivable has been calculated with interest and other costs, and it is foreseen that the case will be concluded in favour of the Client in the hearing to be held in June 2024.

CASE №2:

Gökmen Başpınar
Senior Partner

The client company ("Client Company"), which is engaged in the production of marble, has reached an agreement with a company ("Mining Company"), which has a mine in Turkey, for the purchase of marbles extracted from the mine which the Mining Company has an operating licence of, in a serious assembly annually and within the scope of this agreement, the Client Company has made an advance payment of USD 500 000 to the Mining Company.

The Mining Company stated that they cannot obtain a letter of guarantee from the banks as a guarantee for the advance paid due to the costs incurred by the banks, but offered that they could issue a promissory note as a guarantee, and the Client Company accepted this offer and obtained a promissory note as a guarantee for the advance payment.

After the advance payment was made, the Mining company started to send the raw marbles to the Client Company's production facilities. However, the incoming raw marbles did not meet the agreed specifications and the committed shipment tonnages could not be delivered by the Mining Company.

Although the Client Company sent written warnings several times, the Mining Company failed to fulfil its contractual obligations regarding the marble specification and quantity, whereupon the Client Company terminated the contract with notice and demanded the return of the advance payment.

The Mining Company claimed that the contract was unfairly terminated by the Client Company and refrained from returning the advance amount by stating that they are keeping it as compensation.

The Client Company, upon receiving negative information about the financial situation of the Mining Company from the market, appointed GRATA International Turkey's Istanbul Office lawyers to recover the advance payment from the Mining Company as soon as possible.

The lawyers of GRATA International Turkey's Istanbul Office, taking into account that the lawsuits related to the receivables are concluded in a long time in practice, quickly applied to the competent court and obtained a precautionary attachment decision, which is a type of precautionary measure, and with this decision, they secured the receivable of the Client Company during the lawsuit by having an injunction applied on all raw marbles in the mine belonging to the Mining Company.

CASE №3:

Kaan Gök
Senior Partner

Within the scope of its real estate investments in Turkey, in April 2018, the client Company acquired a

warehouse with a monthly rental income of approximately USD 500 000 from its tenant, an international logistics company, for USD 35 000 000.

While making this purchase, the Client Company obtained USD 21 000 000 of the sales price from the bank as a loan.

In October 2018, due to the increase in exchange rates due to the economic problems in the country, the state intervention took place and in this direction, with the Presidential Decree No. 32 on the Protection of the Value of Turkish Currency which was published on 13.09.2018 was amended and the obligation to determine the price in Turkish Currency in some contracts, especially lease agreements, was introduced and the obligation to convert the existing foreign currency contracts into Turkish Currency within 30 days was enforced.

Due to the legal obligation of 30 days, the Client Company has organised an additional protocol with the Lessee Logistics Company and converted the rental fee from USD to Turkish Lira. Later on the day of the signing of the additional protocol, the Ministry of Finance issued a communiqué and granted an exception for the companies in which foreigners are directly or indirectly controlling shareholders to agree on the rental and other fees in foreign currency or indexed to foreign currency in the lease agreements to which they are a party as tenants.

Thereupon, the authorities of the Client Company requested the cancellation of the aforementioned additional protocol on the grounds that the obligation to conclude the aforementioned additional protocol with the authorities of the Lessee Logistics Company had ceased.

After the Client Company's negotiations with the other party for the cancellation of the additional protocol were concluded negatively, the matter was forwarded to GRATA International Turkey’s Istanbul Office by the Client Company for the legal process to be carried out.

The lawyers at GRATA International Turkey’s Istanbul Office requested the court to annul the additional protocol, claiming that the will of the Client Company's executives in the signing of the additional protocol was impaired due to errors in the legal regulation and the exception granted afterwards, and submitted an expert opinion from one of Turkey's leading private law professors in support of this claim.

In the aforementioned proceedings, the Court ruled in favour of the Client Company and decided that the will of the Client was impaired due to technical errors in the legal regulation and the exemption granted afterwards, and therefore, the additional protocol signed with the impairment of will was deemed null and void as of the date of signature.

The aforementioned decision was finalised at the beginning of 2024 after being reviewed by the courts of appeal and the Supreme Court.

On behalf of the Client Company, following the finalisation of the decision, the lawyers at GRATA International Turkey’s Istanbul Office quickly collected USD 8 000 000 in Turkish Lira, which is the difference of the rent underpaid by the Lessee Logistics Company for 5 years, and also filed an eviction lawsuit against the Lessee Logistics Company on the grounds of underpayment of rent.

Due to the risk in the eviction case, the Lessee Logistics Company officials have proposed a new lease agreement with higher rent and better conditions to the Client Company officials, and currently the Client Company is negotiating this new agreement with the lawyers of GRATA International Turkey’s Istanbul Office and it is expected that the Agreement will be finalised and signed in early June 2024.

Thanks to the aforementioned lawsuit filed by the lawyers of GRATA International Turkey's Istanbul Office, the Client Company has been able to collect USD 8 000 000 of rent that it has been deprived of by cancelling the Turkish Lira based Lease Fee, and again, thanks to the eviction lawsuit filed, the Client Company has obtained new lease terms with better commercial terms and will bring approximately USD 15 000 000 of extra income to the Client Company in the next 5 years.

UKRAINE

CASE №1:

Mykola Aleksiuk
Partner

The Solomenskiy District Court of Kyiv ruled on 02.08.2022 that the director of a Ukrainian company (UkrCo) was guilty of violating customs regulations, and the Company's goods totaling EUR 500 000 were seized.

Subsequently, the UkrCo independently appealed the above judgement in the court of appeal, the Supreme Court, and by filing an application for its reconsideration on newly discovered circumstances. Each time, the courts refused to satisfy the UkrCo's claims.

UkrCo then approached GRATA International Ukraine, and it was decided to re-file an application to reconsider the appealed ruling on newly discovered circumstances.

The complexity of this case is that cases on violation of customs rules are considered under the provisions of the Code of Ukraine on Administrative Offences, which does not provide for the institution of reconsideration of court decisions on newly discovered circumstances. The majority of such applications are either dismissed or refused by the courts.

Nevertheless, the lawyers of GRATA International Ukraine have conducted work to establish new material circumstances, and substantiated the application for reconsideration of the ruling on newly discovered circumstances with the practice of the ECHR (according to which cases of administrative offences are considered criminal within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms) and also used the analogy of law (referring to the norms of the Criminal Procedure Code on reconsideration of court decisions on newly discovered circumstances).

After a second reconsideration, the ruling of the Solomenskiy District Court of Kyiv dated 13.10.2023 satisfied the application of the UkrCo to the full extent, and the confiscated goods were returned to the client.

CASE №2:

Mykola Aleksiuk
Partner

A Lithuanian company approached GRATA International Ukraine with a request regarding the recovery

of a debt from a Ukrainian LLC arising under a supply contract.

The complexity of the case was that, according to the supply contract, all disputes should be considered in the ICAC at the UCCI, while the client wanted to consider the dispute in the commercial court of general jurisdiction (for faster consideration of the dispute).

GRATA International Ukraine lawyers managed to prove, with reference to the relevant practice of the Supreme Court, that the arbitration agreement on transferring the dispute to the arbitration court is not a waiver of the right to submit a claim to the court, but one of the ways of realising the right to protect one's rights. In connection with the above, the parties had only a legal opportunity, not an obligation to apply to the arbitration court. At the same time, limitation of the right to apply to the commercial court was not allowed.

In addition, it was argued that the arbitration clause in the supply contract could not be fulfilled due to a material mistake of the parties in the provisions that would have allowed to establish the true intentions of the parties regarding the election of the rules under which the arbitration proceedings should be carried out.

Consequently, the commercial court accepted the claim for consideration and satisfied the client's claims in full.

UZBEKISTAN

CASE №1:

Irina Obukhova
Partner

In the early 2000s, a contract was concluded for the construction of a railway section between two Libyan cities ("the Construction Contract"), in which a Russian Joint-Stock Company ("the Claimant") was engaged as a co-contractor. In connection with the execution of the Construction Contract, the Claimant entered into 2 subcontracts with a major Turkish construction company ("the Respondent"), under which the Respondent was obliged to perform construction works. However, due to force majeure caused by the civil war in Libya, the Claimant terminated the Contracts.

Since the Respondent refused to return the advance payment and compensate for expenses, the Claimant filed a claim with the International Commercial Arbitration Court (ICAC) for the return of unjust enrichment in the form of an unused advance payment due to the termination of the Contracts. The Respondent filed a Counterclaim. In 2019, the ICAC arbitration panel partially satisfied the claims of the Parties and ordered the recovery of more than EUR 45 million from the Respondent in favour of the Claimant ("the ICAC Award").

From 2019 to 2022, the Respondent attempted to annul the ICAC Award in Russian arbitration courts, thereby obstructing the enforcement of the ICAC Award. Subsequently, the Respondent voluntarily failed to comply with the ICAC Award.

In 2023, the Claimant approached GRATA International Uzbekistan ("GRATA") with a request to determine whether the Respondent had branches/representative offices in the Republic of Uzbekistan, in order to recognize and enforce the ICAC Award against the Respondent's assets in Uzbekistan.

GRATA's lawyers established that the Respondent does not have branches/representative offices in Uzbekistan, but is a participant in a Company ("the Company") registered in Uzbekistan. Considering that the Law on LLCs of Uzbekistan allows for claims by creditors to recover against a participant's share in the charter capital of the company for the participant's debts in case of insufficient other property of the participant, it was decided to recognize and enforce the ICAC Award in Uzbekistan at the location of the Respondent's assets, i.e., at the place of registration of the Company.

Subsequently, GRATA's lawyers filed an Application for Recognition and Enforcement of the ICAC Award to the Tashkent Regional Economic Court ("the Application").

Due to the fact that from 2019 to 2022 the Claimant was awaiting the results of the appeals to annul the ICAC Award, the procedural time limit for recognition and enforcement of the ICAC Award was missed. In this regard, GRATA's lawyers filed, together with the Application, a Motion for Reinstatement of the Procedural Time Limit. The main argument was that the Economic Procedural Code of Uzbekistan

establishes that grounds for refusing recognition and enforcement of a foreign arbitral award is that the award has not become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. In other words, it would have been impossible to recognize the ICAC Award in Uzbekistan while the Respondent was appealing it in the competent courts of Russia. Consequently, missing the procedural time limit in this context was deemed excusable.

In addition, GRATA's lawyers filed a Motion for Interim Measures in the form of seizure of the Company's charter capital until the Respondent fulfils all of its obligations.

By rulings of the Tashkent Regional Economic Court, the Application was accepted for proceedings, and the interim measures were granted.

The Respondent's representatives filed an Objection to the Application on the following grounds:

1. the Application for Recognition and Enforcement of the ICAC Award is not subject to the jurisdiction of the Tashkent Regional Economic Court, considering that the ICAC Award should be recognized at the Respondent's location;
2. the statute of limitations was missed;
3. the Claimant's (Applicant's) representatives lack the necessary powers of attorney, as the power of attorney issued by the Claimant was not legalised or apostilled.

Regarding the first two grounds, the court took into account GRATA's lawyers' arguments.

On the third ground, the Respondent's representative stated that: "according to the Economic Procedural Code of Uzbekistan, documents issued, drawn up or certified in the prescribed form by institutions, organisations and citizens of foreign states outside the Republic of Uzbekistan in accordance with foreign law in relation to institutions, organisations and citizens of the Republic of Uzbekistan or foreign persons shall be accepted by the economic courts of the Republic of Uzbekistan only if such documents are duly legalised or apostilled..." GRATA's lawyers argued that the Respondent omitted an important continuation of the legal provision, namely: "unless otherwise provided by the legislation or an international treaty of the Republic of Uzbekistan, to which the Republic of Uzbekistan and the state from whose institutions and organisations these documents originate are parties." Russia and Uzbekistan are parties to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002. This Convention states that a valid power of attorney with a notarized translation into the language of the Contracting Party in whose territory it will be used, or into Russian, shall be accepted in the territories of the other Contracting Parties without any special certification. Considering that the power of attorney was issued in Russian, no additional actions with the valid power of attorney were required.

The court took into account GRATA's lawyers' arguments.

CASE №2:

Irina Obukhova
Partner

In accordance with the decision of the Tashkent City Economic Court dated July 29, 2022, and the rulings of the appellate and cassation collegiums of the Supreme Court of the Republic of Uzbekistan dated February 27, 2023, and September 6, 2023, respectively, over USD 300 000 were recovered in favour of the Bank with Foreign Investments from the largest Belarusian IT company as a refund of the licence fee due to the termination of the License Agreement between the parties.

The Licence Agreement was concluded for the right to use software, which was subsequently supposed to be implemented and adapted into the Bank's system based on the Implementation Agreement. After the signing of the acceptance certificate under the Licence Agreement and the completion of part of the work under the Implementation Agreement, the Bank unilaterally refused the services of the IT company, while demanding a refund of the licence fee.

The courts of the first, second, and third instances, considering the Licence Agreement and the Implementation Agreement as a single contract, recognised the impossibility of the Bank to fully utilise the software, and the rights acquired from the IT company, as a significant change in circumstances. They found grounds for terminating the Licence Agreement and refunding the licence fee.

Lawyers from GRATA International Uzbekistan have decided to file a protest against the aforementioned court rulings by personally submitting a statement to the Chairman of the Supreme Court of the Republic of Uzbekistan. They pointed out the incorrect determination of the legal nature of the License Agreement, incorrect identification of the grounds for its termination, and the absence of an assessment of compliance with the conditions for terminating the agreements.

As a result of the reconsideration, by the decision of the revision collegium of the Supreme Court of the Republic of Uzbekistan dated March 5, 2024, the court rulings of the lower instances were overturned, and a decision was made to deny the satisfaction of the claims for the termination of the Licence Agreement and the return of the licence fee. This decision was made based on the arguments presented by GRATA International Uzbekistan, stating that the rights and obligations of the parties under one contract cannot be linked to the exercise of rights and obligations provided for in another contract, as this is not stipulated by the agreements between the parties. Furthermore, the Licence Agreement is based on exclusive rights, and the objects of intellectual property rights are intangible, so the provisions on property rights are not applicable to intellectual property rights, and the transfer of rights constitutes a separate legal act. Based on these criteria, the rules of the Civil Code of the Republic of Uzbekistan concerning the sale contract, including the seller's obligation to deliver the goods, the seller's obligation to preserve the sold property, defects in the goods for which the seller is responsible, and many other rules related to sale contracts and property lease contracts, cannot be applied to licence agreements.

It should also be noted that a significant change in circumstances constitutes external changes beyond the control or actions of the parties to the contract. The implementation of the software did not occur in full due to the Bank's own refusal of the Implementation Agreement. Therefore, there is a change in circumstances stemming from the actions and will of one party, without external changes affecting the Licence Agreement. Additionally, it is necessary not only to consider the terms of the License Agreement between the parties, which stipulate the absence of the Licensee's right to demand a refund of the paid licence fee upon the annulment of the right to use the software but also to take into account the duration of the contract, the expiration of which precludes its termination. The Licence Agreement remains in effect until the parties have fully performed their obligations, and the document granting the Licensee the right to use the software under simple non-exclusive licence terms, signed and certified by the parties, serves as the primary accounting document, documenting the proper fulfilment of the parties' obligations. Therefore, the Bank is not entitled to demand the return of what it has already fulfilled under the obligation until the Licence Agreement is changed or terminated.

About GRATA International

GRATA International is a dynamically developing international law firm which provides services for projects in the countries of the former Soviet Union and Eastern Europe: full coverage of the entire region with network of offices, highly qualified team of professionals suited for cross-border projects. Firm's reputation and expertise are confirmed by testimonials from transnational clients and leading international ratings.

A wide network of office operating under one system and platform delivers great convenience for our clients. Any office can act as a "one-stop-shop" for its clients and provide them with access to services in other cities and countries. If necessary, inter-office teams with relevant experience are assembled to provide solutions to complex tasks. Service quality is assured by a clear system of organisation of this process.

GRATA International is present in the following jurisdictions: Armenia (Yerevan), Belarus (Minsk), Azerbaijan (Baku), Cyprus (Limassol), Georgia (Tbilisi), Kazakhstan (Aktau, Almaty, Atyrau, Astana and other cities), Kyrgyz Republic (Bishkek), Moldova (Chisinau), Mongolia (Ulaanbaatar), Russia (Moscow, St. Petersburg, Rostov-on-Don, Samara), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Turkey (Istanbul), UAE (Dubai), Ukraine (Kyiv) and Uzbekistan (Tashkent).

In addition to its offices, GRATA International has representatives in the UK (London), Germany (Frankfurt), the USA (New York), China (Beijing), Switzerland (Zurich).

GRATA International is regularly acclaimed by leading international rankings: Chambers Global, Chambers Asia-Pacific, Legal 500, IFLR1000, WWL, Asialaw Profiles, and is featured in Deals of the Year Awards by China Business Law Journal.

Key Industry Sectors:

- Banking & Finance
- Construction & Infrastructure
- Industry & Trade
- Mining
- Oil & Gas
- Pharmaceuticals & Healthcare
- Technology, Media & Telecommunications
- Transport

> 21
countries of presence

> 32
years of experience

> 220
professionals

> 15
practice areas

14 600+
clients

37 800+
projects

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Belarus
Minsk

Georgia
Tbilisi

Kazakhstan
Astana
Almaty
Atyrau
Aktau, etc.

Kyrgyzstan
Bishkek

Moldova
Chisinau

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