

## REVIEW

by a foreign scientific consultant on the dissertation  
of Nurtan Azamat Yerlanuly entitled: “Enforcement of Foreign Court and  
Arbitral Awards in the Republic of Kazakhstan: Legal Grounds and Contemporary  
Requirements” submitted for the degree of Doctor of Philosophy (PhD) in the  
educational program “8D04201-Jurisprudence”

### **1. Relevance and novelty of the dissertation.**

This dissertation examines a pressing issue: the enforcement of foreign court and arbitral awards. In the context of globalization and growing international cooperation, the effective enforcement of foreign court and arbitral awards worldwide is becoming increasingly significant. The enforcement of foreign awards is an indicator not only of a country's standing on the international arena but also of the effectiveness of legal regulation of the protection and restoration of violated subjective rights in a given country.

The growth of private law relations complicated by a foreign element, which is observed globally, leads to an increase in the number of disputes considered in courts and arbitrations in various countries. This, in turn, leads to the constant international circulation of court and arbitral awards, which are subject to recognition and enforcement in other countries. Statistics indicate an increase in the number of enforcement proceedings against decisions of foreign courts and arbitrations. However, law enforcement practice reveals a number of cases in which the enforcement of foreign awards is impossible due to various circumstances, which negatively impacts the restoration of violated rights and legitimate interests of subjects. This demonstrates the need to improve the practice and legal regulation of issues of enforcement of foreign court and arbitral awards both at the national and international levels.

Contemporary Kazakhstani legal scholarship lacks comprehensive research on this topic, leaving the issue undeveloped and open to further research given existing challenges. The inclusion of provisions in legislation and international acts that do not provide legal certainty on this issue and are non-binding (even in the presence of established uniform grounds for refusing recognition and enforcement) results in lack of uniformity in law enforcement practice, thereby complicating the restoration of subjective rights. There is no unified system of principles for the international enforcement of judicial and arbitral awards. International documents do not contain mechanisms for the enforcement of foreign awards and partially fulfill their role only in recognizing them. Kazakhstani legislation on enforcement proceedings contains no provisions whatsoever governing the enforcement of foreign court and arbitral awards. National legislation and international acts do not create the conditions for foreign creditors unfamiliar with the national specifics of enforcement proceedings to effectively restore their violated rights and legitimate interests. Thus, the doctoral

student's research not only meets the needs of modern legal scholarship but also has practical significance, as it aims to develop mechanisms for enforcing foreign court and arbitral awards in the context of modern requirements.

The scientific novelty of the dissertation lies in:

1) the fact that issues of enforcing foreign court and arbitral awards are explored in light of recent geopolitical changes and modern requirements for ensuring the restoration of subjective rights;

2) its comprehensive approach to studying the enforcement of foreign court and arbitral awards, with due regards to the provisions of private international law, international civil procedure, and enforcement proceedings;

3) the development of an algorithm for the enforcement of foreign court and arbitral awards and instruction for enforcement of foreign awards proposed on its basis;

4) the development of a system of principles of international enforcement not previously proposed in Kazakhstani doctrine;

5) a proposal to ensure legal certainty in the enforcement of foreign awards by specifying the concept of “public policy” and using the principle of international comity in place of the controversial principle of reciprocity, currently enshrined in legislation and lacking specific content;

6) examining the enforcement of foreign court and arbitral awards from a unification perspective.

The study's findings are based on an in-depth analysis of national legislation, scientific concepts, foreign experience, international instruments, and statistical data. This confirms the high degree of validity and reliability of the study's results.

Thus, NurtanAzamat's dissertation represents a significant contribution to the development of the enforcement of foreign court and arbitral awards and to the legal science of Kazakhstan as a whole. It is highly relevant, scientifically innovative, and practically significant, making it in demand both in academia and in law enforcement. The results of this work can be used not only for further research but also to improve the sphere of application of law and legal regulation of the enforcement of foreign judicial and arbitral awards.

2. Problems have been identified in defining the content and interpreting the concept of “public policy” as one of the grounds for refusing recognition of foreign arbitral awards. Therefore, it is proposed to clarify this concept by proposing a draft Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan.

3. It has been revealed that the concepts of “recognition” and “enforcement” are not distinguished in theory, legislation, and international documents, thereby rendering the mechanisms laid out in international instruments incomplete. Therefore, it is proposed to distinguish between the grounds for refusing recognition and grounds for refusing enforcement. The author of the dissertation proposed the following system of universal grounds for refusing to enforce foreign awards in connection with: the invalidity or lack of legal force of the writ of execution; the expiration of the period for presenting the document for enforcement; the absence of necessary information in the writ of execution; the writ is already executed; submission of the document for enforcement by a person who does not have the authority; submission of the document for enforcement not according to the appropriate territory; immunity of the debtor from enforcement; the existence of parallel enforcement proceedings on the same writ of execution; impossibility of enforcement for objective reasons. The implementation of this universal system of grounds for refusing to enforce foreign judgments will make it possible to achieve uniformity and legal certainty.

4. The absence of a system of principles of international enforcement was revealed, in connection with which a logically coherent system of principles was developed: 1) international comity; 2) free circulation of judgments; 3) genuine connection; 4) non-violation of the mandatory norms of the territory of enforcement; 5) protection of the rights of the creditor; 6) legal certainty; 7) assistance. Consistent implementation of these principles will ensure the restoration of violated rights and legitimate interests of foreign creditors worldwide.

5. A lack of clear and user-friendly instructions and provisions for foreign creditors regarding the enforcement of foreign judicial and arbitral awards has been identified due to the lack of systematization of national legislation. By integrating all stages of enforcement proceedings into a unified system, an algorithm for the enforcement of foreign awards has been proposed, which should be provided to foreign creditors. Based on this algorithm, instruction has been developed, which is proposed for approval by the authorized body in the field of enforcement proceedings.

6. Given that the enforcement of foreign awards affects international circulation worldwide, and given the shortcomings of existing international regulation, a unification mechanism is proposed through the development of a single Convention on the recognition and enforcement of foreign court and arbitral awards. The convention proposes the creation of an International Chamber of Bailiffs with specific tasks and functions aimed at ensuring the enforcement of foreign court and

arbitral awards based on cooperation between states, in place of the current International Union of Bailiffs, which performs its functions only in a nominal manner.

### **3. Theoretical and practical significance of the doctoral dissertation.**

The theoretical significance of this dissertation lies in the fact that the scientific propositions and conclusions formulated therein significantly complement and develop further existing understandings of the enforcement of foreign court and arbitral awards in Kazakhstan and globally. The results of the study contribute to the resolution of a number of pressing theoretical and practical issues in enforcement proceedings.

The practical significance of the study lies in its aim to improve the legislation of the Republic of Kazakhstan, as well as enforcement proceedings, in the recognition and enforcement of foreign court and arbitral awards. The developed provisions can be used in future research and law enforcement practice, in the teaching of the disciplines “Private International Law”, “International Arbitration”, “International Civil Procedure” and “Enforcement Proceedings”.

The proposed algorithm and the instruction for the enforcement of foreign awards based on it will be useful in the practical work of bailiffs in ensuring the restoration of the subjective rights of foreign creditors. Furthermore, a draft Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan on the application of public order rules has practical value due to the current lack of guidance for judges on this issue.

The author has already received approval act for the implementation of certain research findings in the practice of the Regional Chamber of Private Bailiffs for Astana and the First Economic Arbitration.

### **4. Evaluation of the methodological framework and the adequacy of the dissertation's purpose and plan to its content.**

To achieve the research goal and address stated objectives, the author applied a wide range of scientific methods. The study adopts a mixed methodological approach, which combines doctrinal and empirical approaches. Specifically, the doctoral student applied general and specialized scientific methods, such as analysis, synthesis, induction and deduction, the historical method, analogy as a basis for comparative legal research, systematization, proof, and the formal legal method, forensic statistics, the structural-functional method, as well as modeling and SWOT analysis. Furthermore, the study based on a content analysis of judicial practice, which allowed the identification of the most significant errors made when resolving the issue of recognition and enforcement of foreign awards. These methods fully ensure the reliability and validity of the research results.

Also during the research there were analyzed scientific approaches and concepts presented in the works of Kazakhstani and foreign researchers, allowing the author to formulate his own vision for resolving the problems of the enforcement of foreign court and arbitral awards. The structure and content of the study are fully consistent with its goals and objectives. The dissertation's content corresponds to its stated title. It includes an introduction, three sections consisting of logically interconnected and structured subsections, a conclusion, a list of references, and appendices. The results and conclusions of thesis are novel, authentic, valid, and clear for each chapter of the work. The thesis is presented in an accessible style, competently. It should be mentioned that the author analyzed a large number of sources.

The first section is “Scientific, Theoretical, and Legal Foundations of the Enforcement of Foreign Court and Arbitral Awards”. In this section, the author demonstrates the importance of the enforcement of foreign awards from a theoretical and practical perspective. The author provides his view and examines the place of the rules governing the enforcement of foreign court and arbitral awards in the legal system. A thorough analysis of the legal regulation of the enforcement of foreign awards at the international, regional, and national levels is also provided.

In the second section, “Rules for the Enforcement of Foreign Court and Arbitral Awards in the Republic of Kazakhstan” the author reveals the specific issues of the enforcement of foreign awards. He pays particular attention to the grounds for refusing to recognize foreign awards as a prerequisite to enforcement, as well as justifies and proposes a universal system of grounds for refusing to enforce foreign awards and a complex of principles for international enforcement.

The third section, “Bringing the enforcement of foreign judicial and arbitral awards into line with modern requirements” focuses on the development of national and international mechanisms for the enforcement of foreign court and arbitral awards.

### **5. The doctoral student's personal contribution to the problem under study.**

The doctoral student developed and substantiated specific proposals. In particular, the author clarified the content of public policy and substantiated the need to replace the principle of reciprocity with the principle of international comity. A universal system of grounds for refusing to enforce foreign awards and a universal system of principles for international enforcement were proposed. The stages of enforcement proceedings were systematized into an algorithm, and based on this, instruction for the enforcement of foreign awards was proposed. The author also developed a draft universal Convention on the recognition and enforcement of foreign judicial and arbitral awards, justifying the need to establish International Chamber of Bailiffs.

This confirms a high level of originality of the study and highlights the doctoral student's personal contribution to addressing pressing issues of the enforcement of foreign court and arbitral awards.

As a result, it can be concluded that the author has submitted an independent and valuable scientific work, and the purposes of the research were achieved. The dissertation contains many interesting points, the author's position on all the issues is clear and well-defined. The provisions put forward by the author are motivated, they should be considered as valid. The conclusions and recommendations presented in this dissertation are scientifically valid and novel. The work will make a significant contribution to the science of the Republic of Kazakhstan.

In general, the topic of the work was fully disclosed in its content. The terminology and concepts used in the work were presented correctly. The conclusions presented by the author are new, reasonable, consistent with each other, and the material was presented in a logical sequence.

### **General characteristics of the dissertation.**

Nurtan Azamat Yerlanuly's dissertation titled: "Enforcement of Foreign Court and Arbitral Awards in the Republic of Kazakhstan: Legal Grounds and Contemporary Requirements" is a complete, self-written work that possesses internal coherence and contains new, reliable, theoretical, and practically significant results obtained by the doctoral student.

Based on the above, I believe that Nurtan Azamat Yerlanuly's dissertation titled: "Enforcement of Foreign Court and Arbitral Awards in the Republic of Kazakhstan: Legal Grounds and Contemporary Requirements" meets the requirements for dissertations submitted for the degree of Doctor of Philosophy (PhD) in the educational program "8D04201-Jurisprudence" and is recommended for public defense.

### **Foreign scientific consultant:**

Dr hab., professor of University  
of Gdańsk  
(Gdańsk, Poland)

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E.E. Juchnevicius



dr hab. Edvardas Juchnevicius  
profesor Uniwersytetu Gdańskiego



University of Gdańsk  
Jana Bażyńskiego Str. 8  
80-309 Gdańsk  
NIP 5840203239  
REGON 000001330