

Serbia

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

- There are two possibilities to recognize and enforce foreign judgments in Serbia:
 1. Claimant may first initiate separate proceedings for recognition of a foreign judgment. In this case, the only purpose of the recognition proceedings is to integrate the foreign judgment into the Serbian legal system and equate it with a domestic judgment. Thereafter, the claimant may initiate enforcement proceedings based on the duly recognized foreign judgment.
 2. Claimant may submit a petition for enforcement of a foreign judgment in enforcement proceedings wherein the issue of recognition of the award would be dealt with by the court as a preliminary issue.

Serbian courts would not grant recognition and enforcement of a foreign judgment in case (i) it is not a final and binding judgment under the laws of the country of origin; (ii) the court of Serbia has exclusive jurisdiction over the matter, under Serbian law (except in matrimonial matters);(iii) the court or other authority of Serbia rendered final and binding judgment in the same matter and between the same parties, or if there is a recognized foreign court judgement in the same matter and between same parties; (iv) there is no reciprocity in recognition and enforcement of foreign judgments between Serbia and country of judgment's origin (reciprocity is presumed, however); (v) if the foreign court judgment is contrary to the public order of the Republic of Serbia; and (vi) in case the Serbian court finds that foreign judgment was rendered based on failure to provide the counterparty right to defense, especially when this occurred due to failed service of process (except if counterparty entered discussion over the subject matter). The claimant is obliged to submit the certificate that foreign judgment became final and binding as well as the translation thereof made by the sworn-in-court translator.

- Serbia has concluded a number of bilateral treaties on recognition and enforcement (within International Legal Aid Treaties) but did not use model treaties on enforcement of foreign judgment consistently. Serbia is a state party to neither the 1971 nor 2019 Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?

- In case of enforcement of a foreign judgment against a state or international organization, the enforcement proceedings on a foreign state's assets cannot be waged without the consent of the Ministry of Foreign Affairs, save for the case when a foreign state or international organization explicitly consented to the enforcement on its assets.

	<ul style="list-style-type: none"> • There is no specific procedure prescribed in the law regarding obtaining consent from the Ministry of Foreign Affairs. According to general administrative procedure, the deadline for issuance of an administrative act is 60 days upon submission of the application. Along with the application, the applicant should provide a copy of the foreign judgment and intended assets of a foreign state that will be subject to enforcement.
3.	What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?
	<ul style="list-style-type: none"> • The doctrine of sovereign immunity in enforcement proceedings against the states is applied in Serbia. Serbia applies restrictive theory of sovereign immunity (i.e., functional immunity). Although not a party to the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, according to recent decisions of the Supreme Court of Cassation and Constitutional Court of Serbia, the principles of this Convention are applied as customary public international law. However, Serbia is a party to 1961 Vienna Convention on Diplomatic Relations and 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. • A foreign state has a few defenses against enforcement proceedings. Ultimately, it can invoke its sovereign immunity, including immunity from search, requisition, attachment or enforcement on the premises of the mission, their furnishings and other property thereon and the means of transport of the mission, under Vienna Conventions. Also, the court would not grant any enforcement ex officio without the opinion of the Ministry of Foreign Affairs, as it is a prerequisite for any enforcement against any foreign state's assets. As a last resort, a foreign state can always claim that it gave no consent to the enforcement of its assets (to the contrary, a state may provide its consent to enforcement, either expressly or conclusively, by entering the process without invoking its right to immunity).
4.	What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?
	<ul style="list-style-type: none"> • In Serbia, there are no lawful exceptions to the enforcement immunity of a foreign state with reference to improper actions of that state, such as wars of aggression. However, it does not mean that Serbian courts would not establish the practice of providing the exception to sovereign immunity in case of a change in customary international law in this respect, as this legal matter is highly underregulated in Serbia.
5.	What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?
	<ul style="list-style-type: none"> • Although there are due process standards that apply in the proceedings for the enforcement of the foreign court judgment in Serbia, it is worth noting that there are no special due process standards and exceptions that may apply in proceedings for the enforcement of a judgment against a state. • As explained above, Serbian courts would not grant recognition and enforcement of a foreign judgment if the effect of a foreign court judgment is contrary to the

	<p>public order of the Republic of Serbia as well as in case the Serbian court, upon the objection of the counterparty, finds that foreign judgment was rendered based on failure to provide the counterparty right to defense, especially when this occurred due to failed service of process. The public order is defined by Law, as the foundations of social organization established by the Constitution of the Republic of Serbia. Domestic courts interpret this provision so that the institute of public order applies only when a foreign decision encroaches on more important issues - if it is contrary, not to any mandatory provision, but to the very foundations of our social organization.</p> <ul style="list-style-type: none"> • The burden of proof regarding the failure to provide the right to defense bears the party that is claiming that foreign court failed to provide the right to defense. As per the requirement that the foreign judgement is not contrary to the public order, the courts in Serbia are obliged to take this requirement into account ex officio.
<p>a.</p>	<p><i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i></p>
	<ul style="list-style-type: none"> • In the procedure for recognition of the foreign judgement the court will assess every case and interpret if the particular means of service would be contrary to the public order of Republic of Serbia. Accordingly, Serbian courts may interpret the rule that service to foreign states, entities, and individuals should be carried out through diplomatic channels, unless otherwise provided by international agreements, as provision that is under the scope of public order of Republic of Serbia. • Also, the Republic of Serbia will decline to recognize a foreign court decision if it is determined that counterparty could not participate in the proceeding before the foreign court, that is if the counterparty's right on defense has been violated. In situations where the counterparty has taken part in the foreign court proceedings in any capacity (such as submitting documents, attending hearings, etc.), it will be concluded that proper delivery has been established and the right to a defense has not been denied, even if the initial court documents were not personally served. Whether there has been a violation of the right of defense with regard to improper service shall be assessed according to the law of the country where the decision was made. • Consequently, if counterparty participated in the relevant proceeding or if the service was made or attempted in the manner that is in accordance with foreign procedural law and Serbian public order, in the case of service by email or any other electronic means of communicating with a defendant, the domestic court will (if other conditions are met) recognize a foreign decision and perform enforcement proceeding.
<p>b.</p>	<p><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></p>
	<ul style="list-style-type: none"> • In the enforcement proceedings when assessing whether the exceptions may apply regarding the service requirements in the original proceedings against a state, the court will recognize any exception that is in accordance with the Serbian public order, and foreign procedural law and which did not violate the right to defense, as it is described in the point 5. a.

	<ul style="list-style-type: none"> In proceedings conducted before the Serbian authorities, the domestic court or other competent authority, should invite a foreign party to appoint representative for receiving communications, that has residence in the country of the court or other authority before which the proceeding in question is conducted. If a party fails to appoint such a representative, the competent state body shall appoint one, at the expense of the party. To a party who revokes a representative for receiving proceeding's documentation and does not appoint another at the same time, the court or other competent authority may serve by posting the documents on the notice board of the court, or other competent authority.
c.	<i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i>
	<ul style="list-style-type: none"> In Serbian law, there are no special standards required for the representation of a foreign state. Only with regard to the representation of the Republic of Serbia, it is expressly provided that it is represented by the State Attorney's Office.
d.	<i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i>
	<ul style="list-style-type: none"> There are no exceptions in Serbian law that may apply in this situation.
6.	What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state-owned entities?
	<ul style="list-style-type: none"> As we mentioned, in case of enforcement of a foreign judgment against a foreign state or international organization, the enforcement proceedings on a foreign state's assets cannot be waged without the consent of the Ministry of Foreign Affairs, save for the case when a foreign state or international organization explicitly consented to the enforcement on its asset. If the enforcement is determined on the assets of the Republic of Serbia, the objects of enforcement cannot include items prohibited for commerce, such as public streets, parks (<i>res communes omnium</i>), weaponry, and equipment designated for the defense and security of the Republic of Serbia. Also, immovable or movable assets that are used by state authorities to perform tasks within their jurisdiction cannot be the subject of the enforcement. The party claiming that a particular object is exempt from enforcement bears the burden of proof of that fact.