

# Arbitrator's exclusion from recommended list does not constitute ground to invalidate award (Supreme Court of the Russian Federation)

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In *Case No. A40-153265/19*, the Supreme Court of the Russian Federation confirmed that exclusion of one of the members of the tribunal from an institution's list of recommended arbitrators did not lead to invalidation of an award.

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The Russian Supreme Court confirmed that exclusion of one of the members of the tribunal from an institution's list of recommended arbitrators did not lead to invalidation of an award. In doing so, the Supreme Court upheld the judgment of the Commercial Court of the Moscow Region, which had overturned the decision of the lower court, the Commercial Court of Moscow. The lower court had set aside an award issued under the Rules of the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation (MAC).

A maritime shipping company, Atlantic Hermes Shipping Limited (Atlantic) won EUR 1 million in an arbitration against Russian insurance company, Soglasie.

However, the Commercial Court of Moscow subsequently set aside the MAC award because during the proceedings, one of the members of the tribunal was excluded from the MAC's list of recommended arbitrators. The court held that exclusion without notification to the parties deprived Soglasie of the right to challenge the arbitrator (see [Legal update, Arbitrator's removal from institution's recommended list leads to setting aside of award \(Commercial Court of Moscow\)](#)). Subsequently, Atlantic's motion to enforce the award was also rejected.

Atlantic appealed and the Commercial Court of the Moscow Region disagreed with the lower court's approach and overturned the decision and terminated the set aside proceedings. Atlantic's enforcement motion was sent for retrial (where the award was enforced). Soglasie appealed and the Russian Supreme Court upheld the judgment of the Commercial Court of the Moscow Region.

In its reasoning, the Supreme Court applied the procedural estoppel principle, stating that Soglasie had lost its right to raise objections before the state court since no argument had been made within the course of the arbitral proceedings.

Case: [A40-153265/19 \(27 February 2019\)](#).

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