

Russian Supreme Court confirms lack of impartiality and independence where counsel on institutional list of arbitrators

by *Maxim Kulkov (Managing Partner)* and *Kristina Aleksa (Associate)*, **KK&P**

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In *Case No. 2-3969/2016*, the Supreme Court of the Russian Federation considered whether an arbitrator may represent a party in proceedings, even where that arbitrator is not appointed in those proceedings, but their name is included in the relevant institution's list of arbitrators. The Supreme Court also considered whether the court of the first instance should review the case.

The Supreme Court of the Russian Federation, granting an appeal, held that an arbitration procedure may indeed lack impartiality and independence where one of the parties' legal representatives is named in the relevant institution's list of arbitrators.

A dispute arose between three individuals under a loan agreement containing an arbitration clause. The respondent debtors failed to repay the loan and the claimant creditor initiated arbitration proceedings. After the tribunal satisfied the claim, the claimant filed an application with a Russian state court to recognise and enforce the award, which was granted.

The respondents filed an appeal to the Supreme Court and requested that the court deny recognition and enforcement of the award, arguing that the arbitration procedure lacked impartiality and independence. In particular, they argued the claimant's representative was one of the individual's listed on the arbitral institution's list of arbitrators.

On 31 October 2017, the Supreme Court granted the appeal, holding that an arbitration procedure may lack impartiality and independence where a legal representative of one of the parties to the arbitration is on a list of recommended arbitrators, maintained by the relevant arbitral institution. Further, the Supreme Court ruled that the court of first instance should review the case to evaluate the issue of impartiality and independence, as it could lead to a refusal to recognise and enforce the award.

With this decision the Supreme Court confirmed the broad approach of the dissolved Supreme Commercial Court (see *Ruling of the Supreme Commercial Court dated 21 August 2013 in Case No. A50-17879/2012*) and lower courts (*Decree of the Commercial Court of the Uralskiy District dated 24 October 2014 in Case No. A60-13729/2014*, *Decree of the Commercial Court of the Moscow District dated 16 October 2017 in Case No. A41-21296/2017*), establishing the listing of a party's counsel on an institution's list of arbitrators as a ground to deny recognition and enforcement.

Though cited case law concerns proceedings under the rules of domestic arbitration centers, Russian state courts would probably adopt a similar approach to international arbitration awards. Consequently, parties to arbitration should take this into account when choosing counsel if the award is likely to be enforced in Russia.

Case: [Case No. 2-3969/2016](#).

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