

Russian Supreme Court confirms claims concerning transfer or use of public property are not arbitrable and contrary to public policy

by *Maxim Kulkov (Managing Partner) and Alexandra Chilikova (Associate)*, [KK&P](#)

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In *Case No. #64-906/2017*, the Supreme Court of the Russian Federation considered the arbitrability of a claim for foreclosure a mortgaged municipal property, as well as its compliance with public policy.

The Supreme Court of the Russian Federation, reversing decisions of the lower courts, denied enforcement of an award granting foreclosure on a mortgaged municipal property, noting also that claims concerning the transfer or use of public property are not arbitrable.

A dispute arose between the Tomsk Region Committee on Property and a bank, Sberbank, regarding the enforcement of an Independent Arbitration Chamber (IAC) award. The Tomsk Region Committee had provided a mortgage (real estate) to secure a third party's loan obligations to the bank. The mortgage agreement contained an IAC arbitration clause. The third party failed to fulfil its loan obligations, following which, the bank successfully claimed foreclosure on the mortgaged property under the IAC Rules. Thereafter, the bank sought to enforce the IAC arbitral award in the Russian courts.

Both the Russian Court of First Instance and the Cassation Court, in turn, granted enforcement of the award. However, the Supreme Court reversed their decisions and denied enforcement, concluding that:

- The award granting foreclosure on the municipal property essentially allowed a transfer of public property to a private company. Such a transfer is only possible based on privatisation rules which were not applied in this case. This was contrary to public policy.
- Any transactions concerning public property should be subject to public control and, therefore, may not be subject to confidential arbitration (in effect, meaning they are not arbitrable).
- Referral of a case to arbitration increases legal costs for state or municipal bodies that have to pay the institution's and arbitrators' fees which are usually higher than the state court fees. This is contrary to the principle of the [austerity budget](#) and, therefore, contrary to public policy.

This ruling demonstrates the high risk of unenforceability of arbitration clauses in mortgage, sale, exchange or any other agreements concerning the use and disposal of public property. Moreover, any arbitration involving Russian public entities is at risk that enforcement of resulting arbitral awards will be deemed contrary to Russian public policy.

Case: [Case No. A64-906/2017](#).

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