

Russian Supreme Court affirms lower courts' rulings that tribunal need not decide applicable substantive law until rendering final award

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Legal update: case report | Published on 05-May-2017 | Russian Federation

In *Case No.#40-42294/2016 (305-KG16-19843)*, the Russian Supreme Court considered whether an arbitral tribunal has to decide on the applicable substantive law before rendering a final award. The court also considered whether a tribunal has an obligation to notify the parties during an arbitral hearing of applicable provisions of law.

The Russian Supreme Court affirmed lower courts' rulings that an arbitral tribunal does not have to decide on the applicable substantive law before rendering a final award, and the tribunal has no obligation to notify the parties of the applicable provisions of law during an arbitral hearing.

In the present dispute, a German company applied to the Commercial Court of Moscow to enforce an International Commercial Arbitration Court at the Russian Federation Chamber of Commerce (ICAC) award made against a Russian company.

The Russian company argued that the award should not be enforced, stating that the ICAC tribunal had not decided on the applicable substantive law which violated both due process and its rights as a party to the dispute.

The Commercial Court of Moscow enforced the award, reasoning that:

- The ICAC tribunal was not obliged to notify the parties of the particular applicable provisions of law during arbitral hearings.
- The issue of applicable law had to be reviewed only when rendering a final award.
- The Russian company had not substantiated any grounds for denying recognition of the award.

The ruling of the Commercial Court of Moscow was thereafter approved by the Commercial Court of Moscow Region and subsequently by the Supreme Court.

Following the Supreme Court's ruling, if there is a dispute between parties over the substantive law to be applied, each party should consider providing arguments under the law argued to be applicable by the other party together with an interpretation of that law and appropriate references. This is so not least because the parties will not have an opportunity to submit arguments based on the alternative law if they only learn that the alternative law was applied once they receive the final award.

Case: *Case No.A40-42294/2016 (305-KG16-19843)* (Russian Supreme Court).

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