

Russian courts to have exclusive jurisdiction in disputes involving sanctioned entities (Russian Supreme Court)

by *Practical Law Arbitration*, with *KK&P*

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In *Case No A60-36897/2020*, the Russian Supreme Court has issued a decision casting doubt on the enforceability of arbitration agreements entered into by sanctioned Russian parties. The approach taken by the Supreme Court means that the Russian courts have exclusive jurisdiction over all disputes with sanctioned entities, even where such entities are party to an arbitration agreement.

Maxim Kulkov (Managing Partner) and Sergey Lysov (Senior Associate), KK&P

PESA, a Polish company, commenced arbitration under the SCC Arbitration Rules against Russian JSC "Uraltransmash", which, in turn, applied to a Russian court for an anti-arbitration injunction in respect of the SCC proceedings, referring to recently introduced articles 248.1 and 248.2 of the Commercial Procedure Code (CPC) (see [Legal update, Russian President signs law on exclusive jurisdiction of Russian commercial courts in disputes involving sanctioned Russian entities](#)).

Uraltransmash claimed that, because it is subject to US and EU sanctions, the Russian courts had exclusive jurisdiction over the dispute, even though Uraltransmash had an arbitration agreement with PESA. However, the courts, including the Supreme Court, rejected the application, finding that Uraltransmash had not been deprived of access to justice because of the sanctions and had even participated in the SCC proceedings (see [Legal update, Russian Supreme Court dismisses sanctioned company's application for anti-suit injunction against SCC proceedings](#)).

However, following a reversal of the Supreme Court Ruling by its Deputy Chairman, the case was reconsidered by the Supreme Court. The court again rejected Uraltransmash's application, concluding that, since the SCC proceedings were finished, the injunctions application had no subject. However, this did not prevent the court from making general findings on the application of articles 248.1 and 248.2 of the CPC.

Thus, according to the Supreme Court decision, foreign sanctions against Russian persons affect their rights, at least reputationally, and thus deliberately put them in an unequal position compared to other persons. In such circumstances, there are justifiable doubts that a dispute can be fairly considered in the country which imposed the sanctions. The mere fact of the sanctions imposition is sufficient to warrant a conclusion that access to justice has been limited. Therefore, sanctioned persons could apply to a Russian court for an injunction prohibiting foreign proceedings where the sanctions have been imposed by the jurisdiction in which the proceedings are taking place, which, in the case of arbitration proceedings, will be the seat of arbitration.

Notably, the arbitration community advised the Supreme Court to avoid such a wide interpretation of the law: the Russian Arbitration Association submitted its Amicus Curiae, demonstrating that, in other jurisdictions, the party making the application bears the burden of proof of the denial of justice. Similar submissions were made by the Vienna International Arbitration Center. Both Amicus Curiae documents have been ignored by the Supreme Court.

Case: *Case No A60-36897/2020 (Russian Supreme Court) (9 December 2021)*.

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