

Russian Supreme Court dismisses application to set aside arbitral award against state funded entity on grounds of public policy

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

Legal update: case report | [Published on 04-Apr-2018](#) | Russian Federation

In *Case No. #40-98819/2017*, the Supreme Court of the Russian Federation considered a state funded entity's application to set aside an arbitral award on public policy grounds.

A Russian employer, Zvesdny Hotel JSC, (Employer) brought a claim before the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC) against a Hungarian contractor, Polus TFC LLC, (Contractor) arising under an agreement for the construction of a hotel in Sochi for the Olympic games. After the tribunal dismissed the claim, the claimant filed a motion with a Russian state court to set aside the award.

The Employer argued that the award was contrary to public policy because the Employer is 99.5% funded by the Leningradskiy region, which means that the "unjust" dismissal of the claim against the Contractor by the arbitral tribunal will lead to a gap in the Leningradskiy region's budget, and in particular, underfunding of the region's social programs. The Employer also referred to the fact that the construction of the hotel was part of the government's Olympic construction project.

Both the first instance court and the cassation court rejected the motion. The Supreme Court confirmed their decisions with the following reasoning. The mere fact that a party is funded by a state or a region does not alone justify public policy arguments as regions are entitled to establish their own companies for commercial purposes. Further, it was not proved that the construction of the hotel was part of the Olympic program, funded by the state. On the contrary, the construction was in fact funded by a commercial bank loan, and not by the state budget. Therefore, the award did not violate Russian public policy.

On the one hand, this judgment shows a positive tendency against too broad an interpretation of public policy in Russia. On the other hand, it draws a line between privately funded projects and state funded projects, indicating that there may be risks with enforcement of arbitral awards concerning the latter. This is particularly important and should be borne in mind in light of the growing number of FIFA projects and contracts in Russia.

Case: [Case No. A40-98819/2017, 26 March 2018](#).

END OF DOCUMENT

Related Content

Topics

[Arbitral Awards and Challenges](#)

Country Q&A

[Arbitration procedures and practice in the Russian Federation: overview](#) • Law stated as at 01-Oct-2016

[Litigation and enforcement in the Russian Federation: overview](#) • Law stated as at 01-Jun-2017