

Russian Constitutional Court rejects challenge to provisions establishing exclusive Russian court jurisdiction in sanctions disputes despite arbitration agreements

by *Practical Law Arbitration*, with *Kulkov, Kolotilov & Partners*

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In *Case VTB v OWH SE iL, No 999-O (Russian Constitutional Court)*, the Constitutional Court of Russia refused to hear a complaint against the constitutionality of articles 248.1 and 248.2 of the Russian Arbitrazh Procedure Code, which allow the Russian courts to assume exclusive jurisdiction over disputes involving sanctioned Russian parties. However, the court confirmed that the articles do not provide for the automatic exclusive jurisdiction of Russian courts.

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The Russian Constitutional Court has upheld the constitutionality of the provisions of the Arbitrazh Procedure Code (APC) that allow state courts to assume exclusive jurisdiction over sanctions-related disputes.

A dispute arose between the parties to an agreement, which, among other things, provided for disputes to be referred to HKIAC arbitration. On application by the Russian party (VTB), which is sanctioned, the Russian courts assumed exclusive jurisdiction over the dispute under article 248.1 of the APC (*Case No #56-84760/2023*) and issued an anti-suit injunction restraining pursuit of an HKIAC-administered arbitration, brought by the other party (OWH), under article 248.2 of APC (*Case No #56-103943/2023*).

Articles 248.1 and 248.2 of the APC (Lugovoy Law) permit the state arbitrazh (commercial) courts, on application by a party, to assume exclusive jurisdiction over disputes involving Russian sanctioned parties, even where there is an arbitration (or non-Russian exclusive jurisdiction) agreement in place.

OWH applied to the Russian Constitutional Court, challenging the constitutionality of the Lugovoy Law.

The Constitutional Court rejected the application and did not consider the substance of OWH's complaint. However, in doing so, the court stated the following conclusions:

- The Lugovoy Law does not provide for the automatic exclusive jurisdiction of the Russian courts over the sanctions-related disputes.
- A Russian court determining an application under the Lugovoy Law should fully investigate the circumstances of the case and consider whether the sanctioned person or entity will be able to fully exercise their rights of defence and receive a fair hearing under any agreement providing for foreign-seated arbitration or the exclusive jurisdiction of a foreign court. Only evidence of the impossibility of a fair trial abroad can serve as a ground for the Russian courts to assume exclusive jurisdiction.
- Foreign judgments or arbitral awards issued in cases involving sanctions can be recognised and enforced in Russia where the sanctioned party did not object to the consideration of the particular case abroad.

Although the statement that the Lugovoy Law should not be applied automatically is welcome in the abstract, it is regrettable that the Constitutional Court did not comment on the way that Russian courts interpret and apply the provisions in practice. Typically, the courts automatically grant an application to assume jurisdiction, where the applicant is a sanctioned entity or the case is somehow related to sanctions against Russia, without a complete investigation as to whether there are valid obstacles to justice.

Case: *VTB v OWH SE iL, No 999-O (Russian Constitutional Court) (29 April 2025)*.

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