

Russian Supreme Court denies enforcement of domestic award rendered under guise of foreign arbitration center

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In *case A27-5147/2019*, the Russian Supreme Court refused enforcement of an arbitral award rendered as an ad hoc award and administered by a foreign institution because it found evidence that the arbitration was domestic and that the institution was purporting to be a foreign institution. It also found that the institution did not have the status of a permanent arbitral institution in Russia and therefore the award violated the Russian Arbitration Law and public policy.

On 12 March 2020, the Russian Supreme Court refused enforcement of an arbitral award that was termed an ad hoc award and was purportedly administered by the Helsinki International Commercial Arbitration Centre (HICAC). The court found evidence that the arbitration was domestic and that the institution was purporting to be a foreign arbitral institution with the required status of a permanent arbitral institution (PAI) in Russia. In fact, the HICAC did not have PAI status nor was there evidence that the HICAC was a foreign institution. Therefore, the award violated Russian Arbitration Law and public policy.

Since 1 November 2017, all arbitral institutions, including foreign institutions, must obtain the status of PAI to have the right to administer arbitrations in Russia. The only exemption applies to foreign arbitral institutions, which may administer ad hoc arbitrations in Russia. Such ad hoc proceedings are subject to different rules than those applicable to arbitrations administered by a PAI (see [Article, Russian Arbitration Law 2016: key issues](#)).

The Supreme Court discharged the judgments of the lower courts, which had enforced the award and noted that in the case at hand the status of the HICAC as a foreign arbitration institution had not been proven. On the contrary, the evidence indicated that the arbitration was domestic as it was administered in Russia:

- The Secretariat of the HICAC had an address in Russia.
- The appointment of the arbitrator was made in Moscow.
- The arbitral award contained a direct reference to Russian Arbitration Law.

Notably, none of the arbitrators from the recommended list was Finnish.

The Supreme Court also noted that the absence of objections to the tribunal's jurisdiction during an arbitration does not prevent (estoppel) the claimant from raising a public policy argument in the Russian courts, since preventing an evasion of law is a priority for the Russian courts. This approach highlights the overwhelming importance of the fundamental principles of the legal system, which are protected by the public policy exception.

It is to be hoped that this approach will only prevent the enforcement of awards from suspicious "international arbitration centres" and will not influence the enforceability of awards rendered by respectable institutions.

Case: *A27-5147/2019 (Supreme Court) (12 March 2020)*.

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