

# The issue of jurisdiction: Russian Supreme Court annuls enforcement decision against property of Belarus and orders retrial (Russian Supreme Court)

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

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In *Case A40-100098/2020*, the Russian Supreme Court refused to enforce an arbitration award rendered against the Republic of Belarus because the real estate against which enforcement had been made belonged to the embassy of Belarus in Moscow, which was immune from enforcement. The lower courts should now establish whether Belarus owns any non-immune real estate or assets.

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*Maxim Kulkov (Managing partner) and Alexandr Karlovskiy (Paralegal), KK&P*

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The Eurasian Development Bank and JV CJSC Osipovichsky railroad cars manufacturer entered into a loan agreement, which was guaranteed by the Republic of Belarus. The right to recover penalties under the loan agreement was assigned to YK DaVinci LLC ("DaVinci").

The tribunal, acting under the rules of the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC), accepted DaVinci's claim for penalties against Belarus. The Moscow Commercial Court subsequently granted DaVinci's application to enforce the award and rejected Belarus' application to set it aside. That ruling was upheld by the Commercial Court of the Moscow Circuit.

Belarus appealed to the Supreme Court which annulled the lower courts' judgments and ordered a retrial on several grounds, including the court's lack of jurisdiction over enforcement of an award issued against a foreign state.

The Russian Commercial Procedure Code provides that courts only have jurisdiction over enforcement against a foreign state if there is a state-owned property in Russia. The main issue for consideration was whether the court itself must establish that those assets are, or are not, immune from enforcement or whether this is a matter for the bailiff and not relevant for the court when determining jurisdiction.

The courts initially established jurisdiction over the enforcement application due to the location of Belarussian real estate (embassy premises) in Moscow. However, the Supreme Court disagreed with that finding, finding it relevant to determine whether the assets were immune from enforcement and concluding that they were, due to Article 22 of the Vienna Convention on Diplomatic Relations (1961) and the Russia-Belarus Agreement, as of 17 December 2012.

Notably, the Supreme Court's approach on the issue of jurisdiction in this case corresponds to its previous ruling in *Case No A40-67511*, where the court supported termination of proceedings in Moscow in *Tatneft v Ukraine* due to a lack of Ukrainian assets free of state immunity (see [Legal update, Tatneft saga continues: Ukraine's diplomatic premises immune from enforcement \(Moscow Cassation Court\)](#)).

Case: *A40-100098/2020 (Russian Supreme Court) (19 January 2021)*. (Not currently available in English).

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