

Newsletter

Russian Supreme Court supports UralTransMash in a precedent-setting dispute with Polish tramway car manufacturer PESA Bydgoszcz (“PESA”) over Russian courts’ exclusive jurisdiction in sanction-related matters. The new bill may result in further extension of the jurisdiction.

December 15, 2021

Dear Ladies and Gentlemen,

Articles 248.1 and 248.2 of the Russian Arbitrazh (State Commercial) Procedure Code (“**APC**”), aimed at protecting Russian persons subject to foreign restrictive measures - including foreign sanctions -, entered into force on June 19, 2020. We have already described these **changes** in detail, as well as the **first judicial experience** of their application.

In this newsletter, we would like to further analyze this developing trend of transferring sanction-affected disputes under the jurisdiction of Russian courts.

1. **The Russian Supreme Court recently confirmed that the mere imposition of sanctions against a Russian person entails a barrier against their access to justice abroad.**

The attention of the legal and business communities is now focused on the case of *UralTransMash v. PESA (A60-36897/2020)*.

In the dispute, the Russian courts were considering the possibility of prohibiting Polish company RTS PESA Bydgoszcz from continuing the foreign arbitration, which it commenced against UralTransMash JSC (the so-called ‘anti-suit injunction’).

The courts were considering whether it was possible to apply the recent provisions of Art. 248.1, 248.2 of the APC simply because of the imposition of sanctions, or because the sanctioned party has to prove the existence of actual barriers to its access to justice – for example, the impossibility of paying the arbitration fee or the refusal of foreign law firms to represent its interests.

The courts of three instances ruled that the mere fact of imposing sanctions against a Russian person is not enough to grant an anti-suit injunction under Art. 248.2 of the APC; the applicant must prove that there are specific barriers to its access to justice in foreign jurisdictions.

Even though the right to appeal the above-mentioned decision before the Russian Supreme Court had not previously been granted, in September 2021, the case was ultimately forwarded for consideration by the Judicial Chamber on Economic Disputes of the Russian Supreme Court.

In its recent **ruling** of December 9, 2021, the Judicial Chamber adopted a new position where it disagreed with the position of the lower courts, pointing out the following:

- 1) The imposition of sanctions as such already **creates a barrier for the Russian person to access justice.**
- 2) The imposition of sanctions against Russian persons affects their rights - at least their reputation - and thus puts them **in an unequal position** vis-à-vis other persons, and **casts doubt on the existence of guarantees of a fair trial**, including those related to the impartiality of the court.

- 3) Accordingly, for the transfer of a dispute under the jurisdiction of Russian arbitrazh courts, the unilateral expression of the foregoing by the Russian-sanctioned person is sufficient. The Russian person **does not need to separately prove** the specific negative impact of the sanctions on the possibility of enforcing the arbitration clause.

The above findings of the Russian Supreme Court cast serious doubts on the enforceability of clauses in the resolution of disputes abroad concluded with sanctioned persons, including in the period before the entry of Articles 248.1 and 248.2 of the APC into legal force.

Although this condition was introduced by the Russian Supreme Court in this specific case, there can be no doubt that the lower courts will adhere to it, hence this must be taken into account when entering into agreements with Russian-sanctioned parties and drafting dispute resolution clauses.

2. The new bill has been submitted to the Russian State Duma, aimed at further expanding the scope of the sanction rules of the APC.

Another event in the field of sanction disputes is the submission to the State Duma of the Russian Federation of the Bill aimed at further expanding the scope of application of Art. 248.1 of the APC¹.

If this Bill is adopted, the exclusive jurisdiction of the Russian arbitrazh courts, in addition to covering (i) existing disputes regarding persons against whom restrictive measures have been taken and (ii) disputes based on such measures, it will also cover (iii) disputes between Russian or foreign parties and another Russian or foreign party, if the latter, directly or indirectly (including through its affiliated and/or controlling persons):

- 1) **has facilitated the adoption of sanctions**, including by providing financial or other assistance to the proponents of the relevant sanctions; and/or
- 2) **has received unreasonable preferences and (or) unjustified benefits** from the action of sanctions, including the ones received abroad; and/or
- 3) **has failed or improperly performed an obligation due** to the sanctions.

Based on the interpretation proposed in the explanatory note to the Bill², the following situations may lead to the acceptance by the Russian court of its exclusive jurisdiction to consider the dispute and the application of other provisions of Articles of 248.1 and 248.2 of the APC:

- 1) The counterparty of the sanctioned entity fails to fulfill its obligation to the sanctioned entity due to the threat of being held liable for violating the sanction prohibitions imposed by the state of its incorporation.
- 2) The person refuses to cooperate and enter into a contract with the sanctioned person also under the threat of being held liable in the state of its incorporation.
- 3) The CEO of a competitor of a Russian-sanctioned entity in a foreign market has publicly supported the imposition of sanctions against a Russian entity.

Furthermore, according to the explanatory note to the Bill:

- the introduction of these amendments is necessary to "provide a real possibility of compensation for losses and elimination of other adverse consequences that Russian citizens and legal entities suffer as a result of restrictive measures, including through the actual enforcement of a court decision in the Russian Federation through foreclosure of the defendants' property,"
- "the impossibility of effective judicial protection of the rights of persons should be assumed if in respect of these persons restrictive measures have been introduced abroad. Such impossibility does not need to be proved."

We would like to draw the reader's attention to the fact that the Bill has not yet passed the stage of the first reading of Russian State Duma and may eventually be significantly amended.

¹ See: Bill No. 25200-8 "On Amendments to the Arbitrazh Procedure Code of the Russian Federation" of November 25, 2021 // URL: <https://sozd.duma.gov.ru/bill/25200-8>

² *ibid.* URL: <https://sozd.duma.gov.ru/bill/25200-8>

We will keep you updated regarding changes in the status of the Bill, as well as the current development of court practice on the application of the rules on the exclusive jurisdiction of Russian courts in sanction disputes.

We hope you will find the information provided useful. If any of your colleagues and partners would also like to receive our newsletters, please send them a [link](#) to the electronic subscription form. If you would like to learn more about our [Dispute Resolution Practice](#) and [Restructuring and Insolvency Practice](#), please let us know in your reply letter - we will be happy to send you our materials.

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If you have any questions, please, do not hesitate to contact ALRUD experts:



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