

*JSC 'Avia-Fed-Service' v. SJSHC 'Artem', Supreme Court of Ukraine, 761/46285/16-ц, 05 September 2018*

A contribution by the ITA Board of Reporters

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## **Headnote**

The Supreme Court held that an issue of public policy in the context of Russian intervention could not be a ground for non-performance of contractual obligations within the private relationship between two separate legal entities.

## **Summary**

### **Facts of the case**

In 2014 JSC 'Avia-Fed-Service' and SJSHC 'Artem' entered into product supply agreement. Due to the failure of performance of the agreement by SJSHC 'Artem', JSC 'Avia-Fed-Service' referred to the International Commercial Arbitration Court of the Chamber of Commerce and Industry of Russian Federation for recovery of costs.

On 3 October 2016, an arbitral tribunal granted the claim of JSC 'Avia-Fed-Service' and ruled to collect from SJSHC 'Artem' costs.

In December 2016 JSC 'Avia-Fed-Service' applied to the first instance court for recognition and enforcement of the award of the International Commercial Arbitration Court of the Chamber of Commerce and Industry of Russian Federation dated 3 October 2016 in JSC 'Avia-Fed-Service' v SJSHC 'Artem' case.

However, the court dismissed the application on the ground that the ultimate beneficiaries of JSC 'Avia-Fed-Service' are Russian companies which are under the sanctions, so that the enforcement will contradict with public order of Ukraine.

The appeal court upheld the judgment of the first instance court on the ground of violation of public order. Moreover, appeal court added that the New York Convention should be applied to the dispute.

In November 2017, JSC 'Avia-Fed-Service' filed the cassation to the Supreme Court.

### **Question in Dispute**

The central issue was whether the issue of public policy may influence on private relationship between to separate legal entities.

### **Arguments of the Parties**

JSC 'Avia-Fed-Service' substantiated that SJSHC 'Artem' cannot refer to the fact that JSC 'Avia-Fed-Service' is a Russian company as a ground for non-performance of its contractual obligations. Moreover, the award provides the repayment only in favor of JSC 'Avia-Fed-Service', not for other companies, which are alleged ultimate beneficiaries of JSC 'Avia-Fed-Service'.

### **Judgment of the Court**

Supreme Court granted the application of JSC 'Avia-Fed-Service' in part, dismissed the judgments of first instance and appeal courts and remanded the case for retrial reasoning that SJSHC 'Artem' did not provide any evidence of threatening for Ukrainian national security and economy with

enforcement of the award. Court also pointed out that product supply agreement was concluded in December 2014, that is after Russian intervention to Autonomous Republic of Crimea. Moreover, the issue of public policy regarding Russian intervention does not concern private relationship between two separate legal entities.

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The summary of the case file and full text of summarized court decision are available on:  
<https://www.kluwerarbitration.com/document/kli-ka-ons-18-43-005?jurisdiction=Ukraine&type=Court%20Decisions>