

England and Wales Court of Appeal Addresses Russia-Related Issues in New Set of Decisions—*Hulley Enterprises Ltd & Ors v The Russian Federation* [2025] EWCA Civ 108 and *UniCredit Bank GmbH v RusChemAlliance LLC* [2025] EWCA Civ 99

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INTRODUCTION

In a set of recent decisions, the England and Wales Court of Appeal addressed various issues arising in the context of arbitrations involving Russian parties. These include the interaction of issue estoppel and sovereign immunity, as well as the court’s willingness and power to lift anti-suit injunctions.

HULLEY ENTERPRISES LTD & ORS v THE RUSSIAN FEDERATION [2025] EWCA CIV 108

Background

Hulley Enterprises Limited, Yukos Universal Limited, and Veteran Petroleum Limited were former majority shareholders in OAO Yukos Oil Company (“Yukos”). The disputes between the parties involved a series of measures taken by the Russian Federation (“Russia”) against Yukos and its affiliates, including criminal prosecutions and large tax assessments. The measures eventually led to Yukos’s bankruptcy in 2006, adversely affecting the investors’ stakes. The investors initiated three separate arbitrations seated in the Netherlands under the UNCITRAL Rules, claiming for breaches of the Energy Charter Treaty.¹

The identically constituted tribunals rendered their final awards in July 2014, finding that Russia had illegally expropriated the claimants’ investments and ordering Russia to pay more than USD 50 billion in total. Russia sought to set aside these awards on various grounds, including lack of a binding arbitration agreement. The Dutch courts—

¹ Hulley Judgment, paragraphs 4–5.

including the Hague Court of Appeal and the Dutch Supreme Court—upheld the awards and dismissed Russia’s argument that it never consented to the arbitrations.²

The claimants sought to enforce the awards in England and Wales. They relied on the arbitration exception in section 9 of the State Immunity Act 1978 (“SIA”), which provides that a State is not immune from arbitration-related proceedings in the UK courts if it has agreed in writing to submit the underlying dispute to arbitration, and on the previous judgments of the Dutch courts on consent. Russia argued that the High Court had to consider for itself that a valid and binding arbitration agreement existed for the purposes of section 9 SIA. Effectively, Russia recycled arguments already disposed of by the Dutch courts.

The High Court dismissed Russia’s arguments, relying on the Dutch courts’ earlier judgments on the issue of consent. Mrs Justice Cockerill found that the Dutch judgments gave rise to issue estoppel and dismissed Russia’s challenge. Russia appealed, arguing that the application of the doctrine of issue estoppel was improper in the circumstances.³

The Court of Appeal’s Judgment

The Court of Appeal was called upon to decide if an English court can treat a foreign court’s decision as giving rise to an issue estoppel, or if it must determine the issue independently.

Lord Justice Males upheld the decision of the High Court and dismissed Russia’s appeal. He found that the Dutch courts’ decision that Russia had agreed in writing to submit the dispute to arbitration was final and conclusive, creating issue estoppel and precluding Russia from rearguing this issue in the English courts. Thus, the exception in section 9 SIA applied.⁴ The Court of Appeal saw no public policy conflict between the application of issue estoppel and respecting sovereign immunities under international law.⁵

Comment

The Court of Appeal’s judgment confirms that the principle of issue estoppel can arise from a finding of fact in a foreign court judgment in the context of a claim to State immunity under SIA. If the foreign court has found on the facts that the State has consented to arbitration, the State will be estopped from arguing the contrary in English

² Hulley Judgment, paragraphs 6–11.

³ Hulley Judgment, paragraphs 43–48.

⁴ Hulley Judgment, paragraphs 53–71.

⁵ Hulley Judgment, paragraphs 77–82.

enforcement proceedings, and the exception to immunity in section 9 will therefore be engaged.

UNICREDIT BANK GMBH v RUSCHEMALLIANCE LLC [2025] EWCA CIV 99

Background

Arbitrating with Russian parties has proven to be increasingly complicated since the imposition of international sanctions against Russian entities and the amendments to the Russian Arbitrazh Procedural Code. Pursuant to those amendments, Russian courts may assume exclusive jurisdiction over disputes covered by an arbitration agreement, or issue anti-suit injunctions to restrain arbitration proceedings in cases where the arbitration agreement becomes unenforceable as a result of obstacles in “access to justice” due to sanctions. The Russian Arbitrazh (Commercial) Court also has the power to order (and collect) damages in case of breach of an injunction.

We have previously reported on the complexities of arbitrating with Russian parties [here](#).

German bank UniCredit Bank GmbH (“UniCredit”) and Russian corporation RusChemAlliance LLC (“RCA”) were involved in a dispute over performance and advance payment bonds in connection with two engineering, procurement, and construction contracts for a liquified natural gas plant and a gas processing plant, which were governed by English law and provided for arbitration in Paris.⁶

Following Russia’s invasion of Ukraine and the subsequent imposition of sanctions against Russian entities, UniCredit claimed it could not pay RCA under the bonds. RCA sought relief in the Arbitrazh Court of Saint Petersburg and Leningrad Region (“Arbitrazh Court”) of approximately EUR 443.77 million.

The England and Wales Court of Appeal had issued a final anti-suit injunction in favour of ICC arbitration seated in Paris in 2024, which was subsequently upheld by the Supreme Court of the United Kingdom on appeal in the same year.⁷

In response, RCA obtained an anti-anti-suit injunction from the Arbitrazh Court prohibiting UniCredit from pursuing arbitration or court proceedings outside Russia and imposing a EUR 250 million penalty. The injunction further provided that UniCredit take all measures within its control to cancel the effect of the anti-suit

⁶ UniCredit Judgment, paragraphs 1–4.

⁷ We previously reported on this development [here](#).

injunction issued by the English courts. In view of the hefty penalty, UniCredit applied to vary the anti-suit injunction.⁸

The Court of Appeal's Judgment

The issue before the Court of Appeal was whether it had the power to revoke or vary a final anti-suit injunction previously granted to UniCredit.

Delivering the decision for the court, Sir Geoffrey Vos MR revoked the anti-suit injunction but maintained the order confirming that English courts had jurisdiction over UniCredit's application.⁹ In doing so, he found that the Court of Appeal had the power to vary a final anti-suit injunction in the circumstances, which ultimately involved a private dispute between the parties. Since UniCredit was the one initially applying for the anti-suit injunction, it was entitled to apply to vary it accordingly.¹⁰ The Court of Appeal saw no public policy considerations militating against revoking the injunction.¹¹

Comment

The judgment highlights the complexities of dispute resolution involving Russian entities. The amendments to the Arbitrazh Procedural Code allow Russian parties to insulate themselves from (contractually agreed) foreign proceedings by invoking restrictions imposed by sanctions. The Court of Appeal's decision in *UniCredit* proves the effectiveness of injunctions and the accompanying monetary penalties imposed by Russian courts, which have the potential to undermine the force of injunctions ordered by courts in other jurisdictions, such as England and Wales.

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Please do not hesitate to contact us with any questions



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⁸ UniCredit Judgment, paragraph 6.

⁹ UniCredit Judgment, paragraphs 42–45.

¹⁰ UniCredit Judgment, paragraphs 11–31.

¹¹ UniCredit Judgment, paragraphs 32–41.



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