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# The Hulley Case: Decoding the Unprecedented Role of Issue Estoppel in Jurisdictional Disputes

Esha Rathi · Saturday, March 9th, 2024

On 1 November 2023, the English High Court ("EWHC") delivered its decision in *Hulley Enterprises Limited v. Russian Federation*. The EWHC dismissed the jurisdictional challenge raised by the Russian Federation ("RF"), which contested the enforcement of arbitral awards in favour of the former majority shareholders of OAO Yukos Oil Company ("Yukos").

Despite the RF asserting state immunity under the State Immunity Act 1978 ("SIA"), EWHC, relying on the exception provided by a valid arbitration agreement, rejected this claim. The dismissal stemmed from the RF's inability to reargue the validity of the arbitration agreement, as Dutch courts had previously ruled on this matter affirmatively and the EWHC determined that issue estoppel can be applied against a state in relation to a determination in a foreign judgment. This case sets a unique precedent as it suggests that the application of immunity may be impeded by common law principles, including issue estoppel. This raises questions about the future viability of the immunity defence for other states in similar cases.

While a previous post on this Blog has covered the background and key aspects of the ruling, this discussion hones in on unravelling the EWHC's approach to this groundbreaking issue, providing insight into the underlying principles at play.

**Delineating the Issue of Jurisdiction**

State immunity grants immunity to sovereign states from the jurisdiction of other states' courts. The SIA in the United Kingdom ("UK") is one such law that outlines the principles of state immunity. According to Section 1(1) of the SIA:

> "*a **State is immune** from the jurisdiction of the courts of the United Kingdom **except as provided** in the following provisions of this Part of this Act*".

Conjunctively, as provided by Section 9(1) of the SIA:

> "***where a State has agreed in writing to submit a dispute which has arisen, or may***

> ***arise, to arbitration, the State is not immune*** *as respects proceedings in the courts of the United Kingdom which relate to the arbitration*".

In this case, the jurisdictional challenge arose from the enforcement proceedings in the UK, as the RF claimed state immunity under Section 1(1) of the SIA. However, for this immunity to hold, the RF needed to establish the absence of a valid arbitration agreement, thus asserting that the exception under Section 9(1) of the SIA was not applicable. However, the validity of the arbitration agreement had previously been affirmed by Dutch courts. This raised the question of whether, due to Dutch courts' judgments, the RF was barred from re-arguing the issue of whether it had agreed in writing to submit the relevant disputes to arbitration. If the RF was precluded from re-arguing this question, the jurisdictional challenge would be dismissed, as ultimately occurred.

**Foreign Judgments Resulting in Issue Estoppel**

Issue estoppel prevents a party from relitigating an issue that has been conclusively determined by a court. It is undisputed that foreign judgments can result in issue estoppel, the widely recognised test for which is common ground. A foreign judgment may give rise to an issue estoppel if: i) it is given by a foreign court of competent jurisdiction; ii) it is final, conclusive and on the merits; iii) there is identity of parties; iv) there is identity of subject matter; v) the decision on the relevant issue is one which is treated by the relevant foreign court as necessary for its decision. (In this case, there was an issue regarding the identity of issue/subject matter, ultimately found to exist. Kindly refer to the previous post for a discussion on this.)

While the RF did not take issue with these elements, it directed the EWHC's attention to the need for caution when establishing issue estoppel based on a foreign judgment. The EWHC concurred, elucidating that what is essential is not general caution but an analytical one since unfamiliarity with procedural intricacies in foreign jurisdictions could make it challenging to ascertain whether an issue was conclusively decided or if the decision played a pivotal role in the judgment as opposed to being merely collateral. Nonetheless, this challenge should not serve as a rationale for refusing to treat a foreign judgment as binding. If disparities in procedural aspects impede clarity, the court should exercise caution and scrutinise the precise identity of the issue determined, its necessity for the decision, and whether there has been a decision 'on the merits'.

**Interrelation of Issue Estoppel and State Immunity**

While there is consensus on the acknowledged duty to uphold the immunity stipulated in the SIA, the crux of the matter lies in whether this commitment implies a prohibition on relying on issue estoppel.

In the context of the general immunity from jurisdiction under Section 1 of the SIA, Section 1(2) states that:

> "*a* ***court shall give effect to the immunity conferred by this section*** *even though the State does not appear in the proceedings in question*".

The RF submitted that this provision has long been understood as imposing upon English courts, a positive duty to give effect to the immunity conferred by the SIA, in accordance of which, the said courts have consistently underscored the importance of affording a state a full and effective opportunity to argue state immunity. Therefore, according to the RF, the EWHC's freestanding duty to inquire requires to be satisfied on its own analysis of the existence of a valid arbitration agreement – an exception to state immunity outlined in Section 9 of the SIA – and such applicability of state immunity cannot be foreclosed on the basis of Dutch courts upholding the validity of the arbitration agreement, without full argument before the English courts.

However, Yukos submitted that the EWHC is not being precluded from determining state immunity or that state immunity is not being overridden by issue estoppel. They explain that the SIA conveys rights but subject to exceptions – under Section 1 of the SIA, RF is *prima facie* entitled to immunity, but to the extent not disapplied (as under Section 9 of the SIA in this case). Therefore, they are positively inviting the EWHC to rule on state immunity by deciding whether Section 9 of the SIA applies, but since the SIA says nothing about how the court should determine the issue, there is nothing wrong with the EWHC applying English law, including issue estoppel, and thereby reaching the answer that there is no state immunity.

The EWHC concurred with this argument made by Yukos, adding that the SIA includes nothing which disapplies procedural or substantive rules that would otherwise apply and therefore, there is no reason interior to the SIA which would make issue estoppel inapplicable to a question arising vis-à-vis a state.

**State Immunity Captured by CJJA**

The Civil Jurisdiction and Judgments Act 1982 ("CJJA") pertains to the enforcement of judgments in the UK. Section 31(1) of CJJA states that:

> *a judgment given by a court of an overseas country against a state other than the United Kingdom or the state to which that court belongs shall be recognised and enforced in the United Kingdom if, and only if—(a) it would be so recognised and enforced if it had not been given against a state; and (b)* ***that court would have had jurisdiction in the matter if it had applied rules corresponding to those applicable to such matters in the United Kingdom in accordance with sections 2 to 11 of the State Immunity Act 1978****.*

Therefore, so long as the relevant enforcement test is met and the judgment is one which would not have offended the SIA if the case were brought in the UK, recognition/enforcement should follow. This raised the question of whether the RF would have been immune if Dutch Courts had applied rules corresponding to Section 9 of the SIA.

Section 2(1) of the SIA states that "a State is **not immune** as respects proceedings in respect of which it has **submitted to the jurisdiction** of the courts of the United Kingdom".

According to Section 2(3) of SIA:

> "*a state is deemed to have **submitted**– (a) if it has **instituted the proceedings**; or (b) subject to subsections (4) and (5) below, if it has **intervened or taken any step in the proceedings***".

Conjunctively, Section 2(4) of SIA states that:

> "*Subsection (3)(b) **above does not apply to intervention or any step taken** for the purpose only of —*
>
> *(a) **claiming immunity**; or (b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it*".

The RF may have relied on Section 2(4) of the SIA, on the basis that there is no such submission because the basis of its presence before Dutch courts is that it did not agree to arbitrate (thus maintaining its claim to immunity in this regard). However, Section 2(4) of the SIA explicitly goes to Subsection (3)(b). This case is a Subsection (3)(a) case because the RF had submitted to the jurisdiction in the Netherlands by initiating proceedings to challenge the arbitral awards in Dutch courts. So, if Dutch courts applied Section 9 of the SIA *mutatis mutandis*, there would have been no state immunity, as was submitted by Yukos and agreed upon by the EWHC.

It was also observed that, like the SIA, there is nothing in the CJJA which affects common law processes and doctrines.

Therefore, the EWHC concluded that the RF being a state does not preclude the finding of issue estoppel, if other conditions are satisfied. The RF chose to dispute jurisdiction in the Netherlands. It has had a determination, and cannot seek to have another one before a different court.

**Concluding Remarks**

This decision underscores the utility of issue estoppel as a valuable tool in enforcement proceedings, even when dealing with state parties. It firmly establishes that sovereign immunity does not entitle states to re-litigate the same issue across multiple jurisdictions.

As the earlier post notes, the ramifications of this case are profound at a practical level, emphasising the importance for parties to consider the potential advantages and pitfalls in their challenge and enforcement strategies. Enforcement proceedings, especially those involving states, often unfold simultaneously in various jurisdictions, making the interplay between decisions from different jurisdictions a crucial factor. In this instance, The RF's active challenge of the arbitral awards, rather than resisting on jurisdictional grounds during enforcement, led to the Dutch judgments that proved detrimental to RF in the context of English enforcement proceedings.

As noted by the EWHC, there was a lack of definitive authority on this matter. No precedent existed where an issue estoppel had been established against a foreign state through a foreign judgment, and conversely, no case explicitly ruled out the possibility of such an estoppel.

Consequently, this case represents the emergence of a significant jurisprudential question. The EWHC made a substantial advancement, albeit incrementally within the framework of existing legal principles, ensuring the judgment's soundness remains beyond reproach. What initially seemed a complex and contentious matter concluded on a straightforward note, with all elements aligning seamlessly.

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