



Review of Judicial Practice

Antisuit Injunctions and Russian Courts' Exclusive Jurisdiction under Lugovoy Law (Articles 248.1 and 248.2 of APC)

K I A P

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Overview of Articles 248.1-248.2 of APC RF

In 2020, the Russian Arbitrazh (Commercial) Procedure Code (**APC RF**) was amended to provide Russian state courts with tools to respond to anti-Russia sanctions (as the law indicates – “the restrictive measures”¹).² The said law (also called **Lugovoy Law**) introduced two new Articles 248.1 and 248.2 into APC RF, which provide for the following procedural mechanisms:

- Exclusive jurisdiction of Russian courts in relation to disputes involving persons under sanctions, as well as disputes based on anti-Russia sanctions;
- An injunction preventing the initiation or continuation of proceedings in a foreign court or international commercial arbitration seated outside the territory of the Russian Federation;
- A monetary penalty in case of violating the injunction prohibiting initiation or continuation of proceedings in a foreign court or international commercial arbitration seated outside the territory of the Russian Federation.

The purpose of the introduced amendments, according to the explanatory note to the draft law, is to establish guarantees for ensuring the rights and legitimate interests of persons under anti-Russia sanctions.³ Such sanctions for the purposes of applying Article 248.1 of APC RF may be introduced by the following entities:

- By a foreign state,
- By a State association and (or) union and (or)
- By a state (interstate) institution of a foreign state or state association and (or) union.

¹ Despite the fact that restrictive measures of foreign states in the strict sense of the word are not international sanctions, being unilateral in nature, but in this case are recognized by many states), we use the term “sanctions” in this review in its generally accepted meaning as equal to the term “restrictive measures”.

² Federal Law of 08 June 2020 No. 171-FZ “On Introducing Amendments to the Arbitrazh (Commercial) Procedure Code of the Russian Federation in Order to Protect the Rights of Individuals and Legal Entities in Connection with Restrictive Measures Imposed by a Foreign State, a Union of States and/or State (International) Institution of a Foreign State or a State Association and (or) Union”.

³ The procedural history is available here: <https://sozd.duma.gov.ru/bill/754380-7>.

Grounds for the exclusive jurisdiction of state commercial courts under Article 248.1 of APC RF

According to Article 248.1 (1) of APC RF, the exclusive jurisdiction of state commercial courts of the Russian Federation covers the following disputes:

- With the participation of the persons under sanctions;
- With the participation of one Russian or foreign person with another Russian or foreign person, if the basis for such disputes is sanctions within the meaning of Article 248.1 of APC RF in relation to Russian individuals or legal entities.

Moreover, Article 248.1 (2) of APC RF classifies as persons under sanctions not only Russian citizens and legal entities, but also foreign persons against whom sanctions have been applied, when the basis for their application is anti-Russia sanctions (sanctions against Russian individuals or legal entities).

Article 248.1 of APC RF contains an exception to the general rule of its application: if an international treaty of the Russian Federation or an agreement of the parties provides for the consideration of disputes in a foreign court or international commercial arbitration seated outside the Russian Federation, **the provision on the exclusive competence of Russian courts does not apply** (Article 248.1 (1) of APC RF). Probably, the “international treaties of the Russian Federation” include bilateral investment agreements of Russia with other countries. Such agreements often contain arbitration clauses for disputes resolution between one State Party and investors from another State Party.

Article 248.1 (1) of APC RF is one of the indicators that the term “exclusive competence” was used by the legislator in a meaning different from that used in Article 248 of APC RF, since exclusive competence usually cannot be changed by agreement of the parties.

The legislator specifies that Article 248.1 of APC RF may also be applied in the event that an agreement between the parties to refer disputes for consideration to a foreign state court or international commercial arbitration seated outside the Russian Federation is unenforceable due to the application of sanctions against one of the parties to the dispute that create obstacles for such a person in accessing justice (Article 248.1 (4) of APC RF).

Procedure for applying Article 248.1 of APC RF

According to the meaning of Article 248.1 (3) of APC RF, persons under sanctions have the right to apply to the commercial court of the constituent entity of the Russian Federation at their location or place of residence. This rule on jurisdiction shall apply, provided that there is no dispute between the same persons, on the same subject, and on the same grounds in the proceedings of a foreign court or international commercial arbitration seated outside the territory of the Russian Federation.

Earlier, judicial practice established that the rule on jurisdiction at the location of the person against whom sanctions have been imposed cannot be changed unilaterally by the sanctioned person.⁴ However, in several cases, the courts decided that, if the claimants make claims against both foreign companies and their Russian subsidiaries, then such cases are subject to the jurisdiction of commercial arbitrazh (commercial) courts at the location of the defendant Russian companies.⁵ There is also a practice when courts indicate their lack of competence to consider an application containing a reference to Lugovoy Law and transfer the case to another commercial court of the subject, but, at the same time, in the Ruling itself on the transfer of the case due to lack of jurisdiction, they indicate the exclusive competence of Russian courts and the applicability of Article 248.1 of APC RF.⁶

According to Article 248.1 (5) of APC RF, the Article's provisions do not prevent the recognition and enforcement of foreign judicial judgments or arbitral awards taken at the request of a person specified in Article 248.1 (2) of APC RF (persons under sanctions), or if such person did not object to the consideration of a dispute with their participation by a foreign court or international commercial arbitration seated outside the Russian Federation, and never applied for an antisuit injunction preventing initiating or continuing proceedings. This rule was intended to prevent abuses by persons under sanctions who initiated proceedings abroad or participated freely in such proceedings and then decided to refer to Russian courts under Lugovoy Law (procedural estoppel).

Since at the time of preparing this review the practice of applying Article 248.1 (5) of APC RF is not widespread, the question of how exactly a statement of defense should be expressed within the meaning of this rule remains open. However, it is also currently known that if a sanctioned party has previously applied to a Russian court under Article 248.2 of APC RF, but was unable to obtain an injunction against the foreign proceedings because they were terminated by rendering an arbitral award, such party may file objections to the recognition and enforcement of the relevant foreign judgment or award in Russia.⁷

⁴ The case is anonymized.

⁵ Ruling of the Arbitrazh (Commercial) Court of St. Petersburg and Leningrad Region dated 10 June 2024 in case No. A56-50890/2024.

⁶ For example, the ruling of the Arbitrazh (Commercial) Court of Kostroma Region dated 23 April 2024 in case No. A31-9559/2023.

⁷ Resolution of the Arbitrazh (Commercial) Court of the City of Moscow dated 13 September 2023 in case No. A40-116183/2023.

Procedure for applying Article 248.2 of APC RF

Article 248.2 (2-3) of APC RF grants persons under sanctions the right to file an application to prohibit the initiation or continuation of proceedings in a foreign court or international commercial arbitration seated outside the Russian Federation in accordance with Article 248.2 of APC RF.

A person against whom proceedings have been initiated in a foreign court or international commercial arbitration seated outside the Russian Federation on disputes listed in Article 248.1 of APC RF (disputes involving persons under sanctions, the basis of the dispute is sanctions), or if there is evidence that such proceedings will be initiated, has the right to apply for an injunction to initiate or continue proceedings. The competent court for considering an application for the injunction is the Russian state arbitrazh (commercial) court at the applicant's location or place of residence.

As confirmed by the case law, Russian courts are authorized to issue an injunction specifically over a person who is a party to foreign proceedings (or may potentially be a party thereto); issuing an injunction over a jurisdictional body to which a dispute has been or may be referred for consideration is not permitted.⁸ However, in practice there are cases of imposing a ban on an arbitrator,⁹ which is rather an incorrect application of the law.

According to Article 248.2 (2) of APC RF, the application for an injunction on initiating or continuing proceedings must contain the following information:

- The name of the state arbitrazh (commercial) court to which the application is submitted;
- The name of the applicant, their address or place of residence, and the name of the person in respect of whom the injunction is sought, their address or place of residence;
- Information on claims that may be presented or have already been presented in a foreign court or international commercial arbitration seated outside the Russian Federation;
- Circumstances confirming the exclusive jurisdiction of Russian state arbitrazh (commercial) courts, including proof (if any) confirming that the agreement of the parties to refer disputes to a foreign court or international commercial arbitration seated outside the Russian Federation cannot be performed by the party to the dispute;

⁸ Resolution of the Arbitrazh (Commercial) Court of the City of Moscow dated 26 April 2022 in case No. A40-85951/2022.

⁹ The case is anonymized.

- The applicant's request for an injunction on initiating or continuing proceedings in a foreign court or international commercial arbitration seated outside the Russian Federation;

- List of attached documents.

In addition to the basic list of documents stipulated by Article 126 of APC RF, the applicant must also submit with the application copies of documents evidencing the intention to initiate proceedings before a foreign court or international commercial arbitration seated outside the Russian Federation, or the fact of the existence of such proceedings (including pre-court / pre-arbitration claims, statements of claim and other documents; in practice, confirmation of the initiation of proceedings abroad may be, for example, the fact that a competent Russian court is processing a request from a foreign court to notify the respondent located in the Russian Federation) and copies of documents confirming the Arbitrazh (commercial) courts' exclusive competence to consider the dispute (Article 248.2 (4) of APC RF).

An application for an injunction to initiate or continue proceedings in a foreign court or international commercial arbitration seated outside the Russian Federation shall be considered by a judge at their sole discretion in accordance with the rules for considering a case by an Arbitrazh (commercial) court of first instance, taking into account the specifics provided for in Article 248.2 of APC RF. Based on the results of considering the application, the Arbitrazh (commercial) court issues a ruling in accordance with the rules of Chapter 20 of APC RF. The decision of the Arbitrazh (commercial) court may be appealed by way of cassation before the Arbitrazh (commercial) court of the district within one month from the date of its issue.

Procedure for awarding a monetary penalty by the court in case of violating the injunction to initiate or continue proceedings abroad

Article 248.2 (10) of APC RF provides for the possibility of a competent court awarding a monetary penalty in the event of a violation by a party of an injunction issued against them at the request of the applicant. When the court does not establish a fine for violating the injunction when it is issued, the applicant applies to the same court with an application on the establishment and collection of a penalty after the injunction has been violated.¹⁰ Practice shows that applications for the recovery of a fine following a violation of the injunction to initiate or continue foreign proceedings are filed within the same case in which the penalty was imposed.¹¹

¹⁰ Ruling of the Arbitrazh (Commercial) Court of the City of Moscow in case No. A40-51964/2022 dated 30 November 2022, etc.

¹¹ *Id.*

In awarding a monetary sum, the court must be guided by the principles of fairness, proportionality and inadmissibility of getting benefits from unlawful or dishonest conduct. The amount of money to be collected by a state arbitrazh (commercial) court must not exceed the claimed amount in a foreign court or international commercial arbitration seated outside the Russian Federation and the legal costs incurred by the party to the dispute.

Since the amount of the fine depends on the claimed amount in a foreign forum, some foreign companies formulate the claims declaratively, i.e. in the form of declaring an obligation or prohibition to perform certain actions, recognition of the main agreement or dispute resolution agreement as valid. In such a case, the court proceeds only based on the amount of the declared legal costs.¹²

Articles 248.1, 248.2 of APC RF and a sanctioned person's actual restrictions of access to justice

Initially, experts of the Russian Ministry of Justice expressed an opinion that when deciding on the application of these procedural mechanisms, the courts would take into account the factor of the actual presence or absence of access to justice.¹³

Prior to this, in 2015, the largest European arbitral institutions declared that sanctions, in general, did not prevent the consideration of a dispute in international arbitration involving a person under sanctions.¹⁴ The same conclusion follows from the 2017 ICC Guide for Parties and Panels.¹⁵ Already after February 2022, other European arbitral institutions have pointed out that foreign arbitral institutions play an indispensable role in ensuring access to justice, against the backdrop of adopting new provisions of the 7th package of EU sanctions, which explicitly excluded from the sanctions regime transactions intended to provide persons under sanctions with access to international arbitration.¹⁶

However, Russian judicial practice, unfortunately, has gone against the legislator's intentions, the forecasts of the Ministry of Justice and the willingness to meet halfway on the part of foreign arbitration institutions: Russian courts often prefer to ignore the need to prove the fact of the restricted access to justice in a specific case and apply Lugovoy Law broadly, sometimes in direct contradiction with its wording.

¹² Ruling of the Arbitrazh (Commercial) Court of the City of Moscow in case No. A40-51964/2022 dated 30 November 2022, etc.

¹³ M.L. Galperin. Battle of jurisdictions: do Russian courts have procedural weapons? Commentary on the amendments introduced to APC RF by Federal Law No. 171-FZ dated 08 June 2020 // Bulletin of Economic Justice of the Russian Federation. 2021. No. 1.

¹⁴ The potential impact of the EU sanctions against Russia on international arbitration administered by EU-based institutions (20.08.2015) / Legal Insight. URL: <https://www.lcia.org/News/the-potential-impact-of-the-eu-sanctions-against-russia-on-inter.aspx>.

¹⁵ ICC Guidelines for Parties and Panels dated 29 September 2017. URL: <https://iccwbo.org/wp-content/uploads/sites/3/2017/11/note-to-parties-and-arbitral-tribunals-on-icc-compliance-english.pdf>.

¹⁶ Joint statement of SCC, VIAC, FAI, DIS, CAM and Swiss Arbitration Centre on the EU's 7th sanctions package (26.07.2022). URL: https://viac.eu/images/documents/JOINT_STATEMENT_7TH_SANCTIONS_PACKAGE_26_July_2022_final.pdf.

Below we have described key cases under Lugovoy Law. Further, the Annex to this Alert presents brief statistics of all cases under Articles 248.1 and 248.2 of APC RF, considered after the Ruling of the Judicial Chamber on Economic Disputes of the Supreme Court of the Russian Federation in case No. A60-36897/2020 (**Uralvagonzavod**).

The Russian version of this Alert contains detailed description of 480 cases included in the statistics. The description is available via the [link](#).

Uralvagonzavod – the very fact of imposing sanctions is sufficient to apply Articles 248.1 and 248.2 of APC RF

Case No. A60-36897/2020¹⁷ became a landmark decision for the courts' interpretation of Articles 248.1 and 248.2 of APC RF. Initially, the courts hearing the case took different positions on whether the applicant must prove that there are circumstances that impede access to justice or whether the very fact that sanctions have been imposed on the applicant demonstrates that the access to justice is limited. The Russian Supreme Court took the latter position as a rebuttable presumption.¹⁸

The dispute arose from a contract for the supply of tram cars between a Russian company Uraltransmash JSC (a subsidiary of Uralvagonzavod JSC) (the **Buyer**) and a Polish company PESA (the **Seller**).

The contract contained an arbitration clause, according to which disputes arising out of the performance of the contract were to be resolved in accordance with the rules of the Arbitration Institute of the Stockholm Chamber of Commerce and Industry (**SCC**).

In 2018, PESA initiated international commercial arbitration under the SCC rules against Uraltransmash JSC.

The total amount of the Seller's claims in arbitration reached USD 55,227,750.64.

The position of the Russian Supreme Court: the mere fact of the introduction of sanctions over a party to a dispute is considered sufficient evidence that the access to justice is restricted.

Initially, the Russian Supreme Court agreed with the positions of the lower courts, which refused to impose an injunction on the continuation of arbitration under the SCC rules in relation to PESA, and the transfer of the application for consideration by the judicial panel was refused.

However, by the ruling of the Deputy Chief Justice of the Russian Supreme Court I.L. Podnosova (currently the Chief Justice of the Russian Supreme Court), the case was transferred to the panel for consideration.¹⁹

¹⁷ Case docket: <https://kad.arbitr.ru/Card/99ce7aa2-7f06-4615-baa5-94473b980771>.

¹⁸ Ruling of the Supreme Court of the Russian Federation dated 9 December 2021 No. 309-ЭС21-6955 (1-3) in case No. A60-36897/2020.

¹⁹ Ruling of the Supreme Court of the Russian Federation dated 21 September 2021 No. 309-ЭС21-6955 in case No. A60-36897/2020.

Under the auspices of the Arbitration Association (**RAA**), a number of Russian and international law firms, including KIAP, prepared an Amicus Curiae—an independent expert opinion—for the Russian Supreme Court on the impact of sanctions on access to justice in proceedings in a foreign court or international commercial arbitration seated outside the Russian Federation.²⁰

According to its conclusions, from the point of view of the jurisdictions considered, the introduction of sanctions against a particular person does not automatically and inevitably entail a restriction of access to justice (including in the form of arbitration): in each specific case, the possibility of considering a dispute that is in one way or another affected by sanctions is a question that depends on the specific legal and factual circumstances of the case and is subject to separate analysis.

However, when considering the application of Uraltransmash JSC, the Russian Supreme Court overturned the decisions of the lower courts.²¹ The Russian Supreme Court indicated that the very fact of introducing anti-Russia sanctions against a Russian person participating in international commercial arbitration seated outside the Russian Federation is considered sufficient to conclude that such person's access to justice is limited, which does not require any additional proof of the impossibility of fully executing that party's right to defense.

At the same time, the Russian Supreme Court once again refused to satisfy the application for injunction on continuing the international arbitration against PESA. The court proceeded from the fact that the injunction on performing certain actions is of a preventive nature and effective only until the actions are committed. Once they have been committed, the injunction loses its meaning because it does not provide the applicant with legal protection.

Also, the award of a monetary sum in the event of violation of a court injunction in accordance with Article 248.2 (10) of APC RF will not achieve the required legal effect. Since at the time of the considering the case by the panel of the Russian Supreme Court, the international arbitration under the auspices of the SCC had been completed, the court refused both to impose an injunction and to award a monetary amount in the event of its violation. The application to refer the case to the Presidium of the Russian Supreme Court was denied.²²

Lawyers have taken a critical view of the Russian Supreme Court's position on *Uralvagonzavod*.²³ Above all, they feared that Russian companies would use sanctions as a pretext to circumvent dispute resolution agreements and groundlessly transfer disputes to Russian courts.

²⁰ Submission of the Arbitration Association to the judge of the Supreme Court of the Russian Federation S.V. Samuilov in case No. A60-36897/2020 (8 November 2021). URL: <https://arbitration.ru/upload/Amicus%20Uralvagonzavod%20as%20filed.pdf>.

²¹ Ruling of the Supreme Court of the Russian Federation dated 9 December 2021 No. 309-ЭC21-6955 (1-3) in case No. A60-36897/2020.

²² Ruling of the Supreme Court of the Russian Federation dated 26 April 2022 No. 86-ПЭК22 in case No. A60-36897/2020.

²³ See, for example, Russian Sanctions Law Bares Its Teeth: The Russian Supreme Court Allows Sanctioned Russian Parties To Walk Away From Arbitration Agreements (22.01.2022) / Kluwer Arbitration Blog. URL: <http://arbitrationblog.kluwerarbitration.com/2022/01/22/russian-sanctions-law-bares-its-teeth-the-russian-supreme-court-allows-sanctioned-russian-parties-to-walk-away-from-arbitration-agreements/>.

Alternative position of the Russian court on the BM-Bank case

The first case,²⁴ in which the court interpreted the approach of the Russian Supreme Court in *Uralvagonzavod*, guided by the principles of APC RF and a literal reading of the law, as well as taking into account the intentions of the legislator, was case No. A40-50169/2022. The case was heard by the Arbitrazh (Commercial) Court of the City of Moscow based on a claim by BM-Bank JSC to impose an injunction on continuing international commercial arbitration under the rules of the International Court of Justice of the International Chamber of Commerce (ICC) in relation to an Italian company.²⁵ The Italian company in the case was represented by KIAP.

BM-Bank JSC (a 99.9% subsidiary of VTB Bank) indicated that sanctions had been imposed over it, limiting means of proper legal protection in ICC international arbitration, namely:

- Clifford Chance LLC's refusal to represent the applicant's interests and the impossibility of engaging other qualified international lawyers due to the alleged full ban on contracting with companies under sanctions;
- Inability to pay arbitration and other fees due to the ban on bank transfers through the international SWIFT system;
- Inability to participate in hearings due to the ban on air travel to and from EU states.

The applicant also pointed out to the lack of impartiality and guarantees of fair proceedings in international arbitration due to the introduction of numerous sanctions by the EU and the implementation of policies aimed at discrediting Russian companies.

The Arbitrazh (Commercial) Court of the City of Moscow interpreted the position of the Russian Supreme Court of the Russian Federation as follows: the Russian arbitrazh (commercial) courts' exclusive jurisdiction over cases established by Article 248.1 of APC RF is a rebuttable presumption.

The court indicated that the absence of burden on a sanctioned party to prove the obstacles that impede its access to justice in international arbitration does not prevent the second party to the dispute from presenting arguments and evidence indicating the absence of such obstacles, as well as evidence indicating that international arbitration proceedings comply with the guarantees of fairness and impartiality of the judicial proceedings.

²⁴ It should be noted that a few days later another ruling was issued, where the court refused to apply Article 248.1 of APC RF, despite the claimant's reference to sanctions against them: Ruling of the Arbitrazh (Commercial) Court of Samara Region dated 24 August 2022 in case No. A55-24707/2022. The Ruling was not challenged and is still an example where the court refused to apply Article 248.1 of APC RF, having established that the claimant had effective access to justice.

²⁵ Ruling of the Arbitrazh (Commercial) Court of the City of Moscow dated 18 August 2022 in case No. A40-50169/2022.

The Court refused to impose the injunction over the ICC arbitration, referring, among other things, to the following circumstances:

- The ICC has the status of a permanent arbitration institution (PAI) in Russia, which indicates that it has an international reputation and that it meets the criteria that guarantee fairness and impartiality of the proceedings;
- The principles of fairness and impartiality in ICC proceedings are satisfied by, *inter alia*, by the way the panel of arbitrators is constituted. In this case, the applicant selected/nominated for approval 2 out of 3 members of the arbitrator panel;
- ICC arbitration is not tied to a specific country: the place of arbitration is chosen by the parties;²⁶
- The ICC has issued a statement on sanctions, which declares equal treatment of parties regardless of their country of origin.

In response to the applicant's arguments, the court established the following:

- The EU and UK sanctions against Russian citizens and organisations do not prohibit engaging foreign firms to the provision of legal services relating to the right to judicial protection. In any case, the applicant may engage other firms, including Russian ones, to represent the applicant's interests. The court noted that the former Moscow office of Clifford Chance had been renamed and continued to operate in Russia under a new name;

- The fact that a bank is disconnected from the SWIFT system does not, in itself, prohibit making payments in any other way including through accounts of other banks that are not disconnected from the international system for transmitting electronic messages on monetary transactions. Also, part of the respondent's arbitration fees in arbitration may be paid by the claimant, which in no way would make the respondent dependent on the claimant;
- Personal presence at the hearings is not required, as the parties have agreed to the option of online hearings.

The court indicated that the Italian company had proven that there were no real restrictions on BM-Bank's access to justice, and therefore the court refused to impose an injunction on continuing international commercial arbitration under the ICC rules.

This was the first case after *Uralvagonzavod*, when the court refused to impose an injunction under Article 248.2 of APC RF at the request of a sanctioned person. The Russian arbitration community supported the approach of the Arbitrazh (Commercial) Court of the City of Moscow.²⁷

However, on 26 September 2022, the ruling of the court of first instance was overturned by the Arbitrazh (Commercial) Court of the Moscow District; the district court imposed an injunction over the ICC arbitration.

²⁶ The court indicated that this is specifics of ICC arbitration, comparing it to "London or Stockholm Arbitration", which is not entirely true, since the described feature is characteristic of international commercial arbitration in general, with rare exceptions.

²⁷ See, for example, news and commentary on the case in the following sources: Arbitration Window to Europe (22 August 2022) / Kommersant, URL: <https://www.kommersant.ru/doc/5524756>; The Arbitrazh (Commercial) Court of the City of Moscow refused to prohibit the Italian company from continuing proceedings in international arbitration (31 August 2022) / Advokatskaya Gazeta, URL: <https://www.advgazeta.ru/novosti/asgm-otkazalsya-zapreshchat-italyanskoy-kompanii-prodolzhat-razbiratelstvo-v-mezhdunarodnom-arbitrazhe/>.

In overturning the ruling of the lower court, the cassation court referred to the position of the Russian Supreme Court in *Uralvagonzavod* and indicated that the fact of the introduction of sanctions against the applicant was sufficient to conclude that its access to justice was restricted.

The Russian Supreme Court refused to refer the case to the panel for consideration. The BM-Bank case has shown that the Russian Supreme Court currently does not intend to change or clarify the standard of proof it laid down in *Uralvagonzavod*.

The stance of the Russian Supreme Court on the broad interpretation of the grounds for applying Lugovoy Law: the municipal authorities' case

In the summer of 2023, the Russian Supreme Court considered another case on the application of Lugovoy Law. In this case, the court has broadened the interpretation of Article 248.1 of APC RF, indicating that strict requirements for entry into the country where a foreign court is located constitute sanctions.

The Administration (municipal authority) of the Sovetsky District (Russia) (the **Russian Administration**) filed a claim against the Administration of the Lithuanian Municipality (the **Lithuanian Administration**). In support of the jurisdiction of Russian courts over the dispute, the claimant also referred to Article 248.1 of APC RF. Courts of three instances found no grounds for considering the dispute in Russia due to the lack of sanctions against the Russian Administration. The courts proceeded from the fact that the dispute was subject to the jurisdiction of the Lithuanian courts at the location of the respondent.²⁸

Following that, the claimant filed a cassation appeal to the Russian Supreme Court. The claimant pointed out that since September 2022 Russian citizens have been prohibited from entering the territory of Lithuania, which, in the claimant's opinion, makes it difficult to access justice in Lithuania. The claimant indicated that, since entry of Lithuanian citizens into Russia is not prohibited, the dispute can only be heard in a Russian state court.

The Judicial Chamber on Economic Disputes of the Russian Supreme Court came to the following conclusions:

- The very fact of the introducing sanctions against a Russian party is considered sufficient to conclude that such a party's access to justice in a foreign state is limited (i.e., the court repeated its *Uralvagonzavod* position);
- In September 2022, the Lithuanian authorities restricted the entry of Russian citizens into the country, establishing a procedure for individual thorough verification;
- The arguments of the Russian Administration regarding restrictions on entry may indicate a violation of its right to personal participation in the court hearing, which is an integral principle of adversarial proceedings and equality of the parties (Article 126 (3) of the Constitution of the Russian Federation);
- Lithuania, as a member of the EU, is an 'unfriendly-to-Russia-state';

²⁸ Ruling of the Arbitrazh (Commercial) Court of the Kaliningrad Region dated 09 September 2022, Resolutions of the Thirteenth Arbitrazh Appellate Court dated 10 November 2022 and the Arbitrazh (Commercial) Court of North Western Circuit dated 11 January 2023 in case No. A21-10438/2022. 12

- Lithuanian citizens are not prohibited from entering Russia, and their access to justice in Russia is not restricted. This confirms the possibility of considering the dispute in Russian state courts.

Thus, the Judicial Chamber considered that the Russian Administration was affected by sanctions and its access to justice in the Lithuanian courts was restricted.²⁹ As a result, the lower courts' acts were overturned, and the case was referred for consideration on the merits.³⁰

Claimants who are trying to achieve the application of Lugovoy Law in the absence of personal sanctions often refer to the

Application of Lugovoy Law in Bankruptcy

In 2024, the practice of handling bankruptcy cases of foreign companies in Russia is getting broader. In order to establish jurisdiction over such a dispute, Russian courts cite Article 248.1 of APC RF on the exclusive jurisdiction in cases involving sanctioned persons,³¹ which is not intended for application in bankruptcy cases. As a rule, the applicant in such bankruptcy cases is the Interregional Inspectorate of the Federal Tax Service for Control and Supervision of Taxpayers in the Sphere of Budget Financing (the **IFTS**).

It is noteworthy that in this type of cases, the courts usually do not even analyze whether sanctions are applied to the applicant. The courts either refer to

described case. However, after the analysis of the court's position, it becomes obvious that the conclusions in the Ruling are applicable only to this facts-specific case where the dispute arose between two local administrations. It is wrong to assume that this Ruling is automatically analogous to the case where an unsanctioned Russian company, whose access to justice abroad is not restricted, is in the same position as the local administration in the case in question.

Article 248.1 of APC RF without any justification, or rely on the reference of the Federal Tax Service that, allegedly due to EU restrictions in the provision of legal services,³² it will not be able to file applications in the country where the debtor is located, without analyzing the factual circumstances of the case.

This practice reflects a misunderstanding of the purposes and grounds of applying Lugovoy Law, which may ultimately harm the interests of Russian creditors.

²⁹ Ruling of the Supreme Court of the Russian Federation dated 03 July 2023 No. 307-ЭC23-4890 in case No. A21-10438/2022.

³⁰ The court granted the claim of the Russian Administration: judgement of the Arbitrazh (Commercial) Court of Kaliningrad Region dated 03 July 2024 in case No. A21-10438/2022.

³¹ The cases are anonymized.

³² The EU sanctions regime excludes from the scope of sanctions the payment of legal assistance for judicial, administrative and arbitration proceedings.

Application of Lugovoy Law in the Context of Foreign Antisuit Injunctions

The injunction against initiating or continuing proceedings under Lugovoy Law is similar to the injunctions available in common law jurisdictions such as the United Kingdom and Hong Kong. Since Russian courts apply Lugovoy Law in parallel with existing dispute resolution clauses, a parallel practice of anti-antisuit injunctions against Lugovoy Law cases is developing in foreign courts. The most discussed series of cases in this regard are the cases of RusChemAlliance against Linde and the guarantor banks. These cases also form the practice of applying the position of the Russian Supreme Court on *Uralvagonzavod* in cases where there are sanctions in relation to the subject of the dispute.

RusChemAlliance LLC (**RCA**) and Linde (the **Contractor**) entered into a contract. The obligations under the contract were secured by guarantees issued by a number of German banks. After February 2022, a dispute arose between RCA and the Contractor.

Since the contract provided for the arbitration administered by the Hong Kong International Arbitration Centre (**HKIAC**), RCA initially intended to assert claims under the arbitration clause and even obtained preliminary injunctions in a Russian court against the Contractor's assets.³³ In the said ruling, the Russian court expressly confirmed the enforceability of the arbitration clause.

Later in March 2023, RCA changed its strategy and filed claims to the Contractor in a Russian court. At that time, there were no personal sanctions in place against RCA; they were introduced only in February 2024.

In challenging the court's jurisdiction, the Contractor, among other things, stated that the Hong Kong High Court had ordered RCA to seek a stay of the Russian proceedings under the threat of criminal prosecution.

Still the Russian court disregarded the injunction of the Hong Kong High Court and rejected the Contractor's motion to dismiss the claim without consideration, referring to sanctions in relation to the subject of the contract.

Meanwhile, RCA filed claims in a Russian court to the German banks, who had refused to satisfy demands under the guarantees securing the Contractor's obligations. The cases developed in a similar manner, including an anti-antisuit injunction by the High Court of Justice of England and Wales against the Russian proceedings and the enforcement of a future Russian court's judgement.³⁵ The Russian court ignored the injunction. The court did not elaborate on the grounds for applying Article 248.1 of APC RF.

Meanwhile, the UK Supreme Court upheld the anti-antisuit injunction by a guarantor bank's application.

Unfortunately, Russian courts ignore foreign anti-antisuit injunctions and the potential impossibility of enforcing subsequent Russian judgments abroad. Neither do Russian courts explain how restrictions on the subject matter in the absence of personal sanctions against the parties to the dispute affect the possibility of considering a dispute abroad.

³³ The case is anonymized.

³⁴ The case is anonymized.

EU Response to Lugovoy Law

Council Decision (EU) No. 2024/1744 (the **Decision**)³⁵ and Council Regulation (EU) No. 2024/1745 (the **Regulation**)³⁶ of 24 June 2024 introduced, among other things, counter-measures to the extensive practice of Russian courts in applying Articles 248.1 and 248.2 of APC RF.

Clause 15 of the Preamble to the Decision notes that Lugovoy Law has been extensively applied in Russian courts and deals (in the EU context) with the cases of satisfying claims against EU companies. Article 1 (1) of the Decision introduces a transaction ban in relation to parties who have lodged claims to obtain an injunction, order, relief, judgment or other Court decision pursuant to Lugovoy Law in order to force European persons to pay funds despite the prohibitions imposed by EU sanctions.³⁷ It is also indicated that such a ban applies not only to cases of application of Lugovoy Law, but also to the application of other “equivalent” legislation, regardless of the form of the Russian court decision (prohibition, ruling, judgement), in relation to contracts affected by EU restrictive measures. It can be assumed that under the risk of violating the 14th package of EU sanctions would also be cases where the parties did not refer to Lugovoy Law, but requested, for example, to apply interim measures in the form of an injunction on initiating or continuing proceedings with reference to Article 90 of APC RF or to satisfy claims for amendments to dispute resolution clauses due to a significant change in circumstances.

Exceptions to the transaction ban for the application of Lugovoy Law and similar measures apply to cases where the transaction/deal is strictly necessary to ensure access to justice in judicial, administrative and arbitration proceedings and for the recognition and enforcement of arbitral awards and judgments given in an EU Member State, if such awards and judgments are consistent with the objectives of the EU restrictive measures.

Furthermore, Article 1 (24) of the Regulation introduces the right to apply to the competent court of a Member State for the recovery of any damages, including legal costs, incurred as a result of claims brought in third countries in connection with transactions subject to EU restrictions, provided that the person concerned does not have effective access to legal remedies in the relevant jurisdiction. Based on the goals of EU legislation, it can be assumed that the provision refers to the effective access of a EU person to justice in Russian courts. In such a case, the damages specified in the provision are likely to be determined by the amount that the Russian court awarded in favour of the party that filed the claim with reference to Article 248.1 of APC RF, and the amount of the foreign party’s legal expenses.

³⁵ Council Decision (EU) No. 2024/1744 (24 June 2024). URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401744.

³⁶ Council Regulation (EU) No. 2024/1745 (24 June 2024). URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401745.

³⁷ Both acts refer to Article 248 of APC RF, while it is obvious from the act that it refers to Articles 248.1 and 248.2 of APC RF.

Key Findings

The judicial practice we have analyzed, along with the statistics presented in Annex, confirms that, with rare exceptions, Russian courts do not intend to deviate from established trends. The number of cases in which courts apply Articles 248.1 and 248.2 of APC RF without examining the imposition of sanctions on a party to the dispute and the impact of these sanctions on access to justice has alarmingly increased over the past year. Judicial acts often reference the “unfriendliness” of the country of the seat of arbitration, the location of the arbitration institution, or the country of origin of the respondent. However, in most cases, the courts do not analyze the connection between the jurisdiction where certain sanctions are adopted and the specifics of the case. These trends contradict the wording of applicable norms, principles of procedural law, the intentions of the legislator, the forecasts of the Russian Ministry of Justice, and even the interpretation of the Judicial Chamber on Economic Disputes of the Russian Supreme Court. Unfortunately, state courts rarely attempt to examine the factual circumstances of the case or assess the actual need to apply Articles 248.1 and 248.2 of APC RF.

These developments mean that foreign counterparties have no guarantee that disputes involving Russian companies will be resolved according to the dispute resolution agreements. This uncertainty negatively impacts Russian companies, as the risks associated with foreign companies—even those from “friendly” jurisdictions—are factored into the “transactional costs” and conditions of doing business with Russian companies. Moreover, when applying Lugovoy Law, many Russian companies overlook the low likelihood of enforcing relevant Russian judgments abroad—that is, recovering funds—as a result of breach of dispute resolution agreements. Additionally, there is an escalating opposition to Lugovoy Law from abroad: since June 2024, Russian companies seeking to apply Articles 248.1 and 248.2 of APC RF face the risk of EU sanctions.

Consequently, international commercial arbitration—an amicable method of dispute resolution that developed during the crises of the last century—is now suffering significant losses due to both the actions of opposing states and their judicial branches, as well as the lack of integrity of a clearly defined part of the arbitration community.

Annex

Statistics of applying Articles 248.1, 248.2 of APC RF by Russian courts.

You may find the description of all 480 cases used for the statistics in Annex [via this link](#).

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Dive even deeper: latest articles on Lugovoy Law by KIAP



[see here](#)

An article by KIAP's International Arbitration Practice, published in Transnational Dispute Management.



[see here](#)

Stepan Sultanov's publication, dedicated to Lugovoy Law, anti-antisuit injunctions and the latest foreign sanctions. The author will analyze the correlation between proceedings under Lugovoy Law and the countermeasures of foreign states. The paper will become available shortly after this alert is published. Stay tuned.



[see here](#)

So far, in Russian:

- Description of all 480 cases used for the statistics in Annex 1 (see QR-code)
- Survey among Russian-speaking parties about reasons and results of applying Lugovoy Law in their practice (via [this link](#))



To better scan the QR-code, zoom the document or simply click the link.

Annex

Statistics of applying Articles 248.1, 248.2 of APC RF by Russian courts

The statistics cover only the cases considered by Russian courts after the Supreme Court of the Russian Federation rendered the Ruling No 309-ЭС21-6955 (1-3) dated 9 December 2021. The statistics also include cases where the higher instances courts referred to the Ruling, albeit they had been considered by lower instances before 9 December 2021. Further, the statistics do not include cases where the issue of applying Articles 248.1 and 248.2 APC RF has not been resolved, or the reference to said provisions is irrelevant.

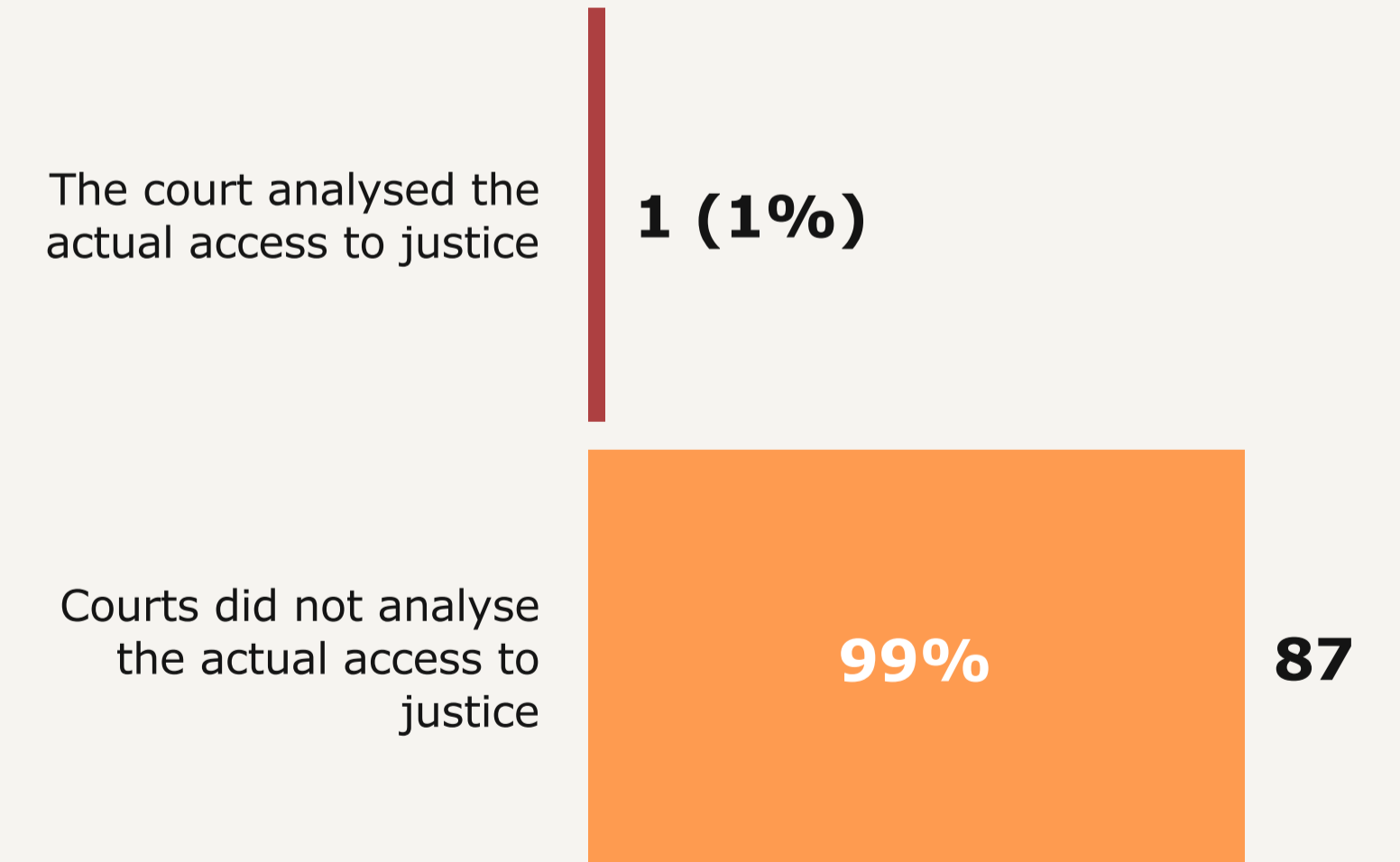
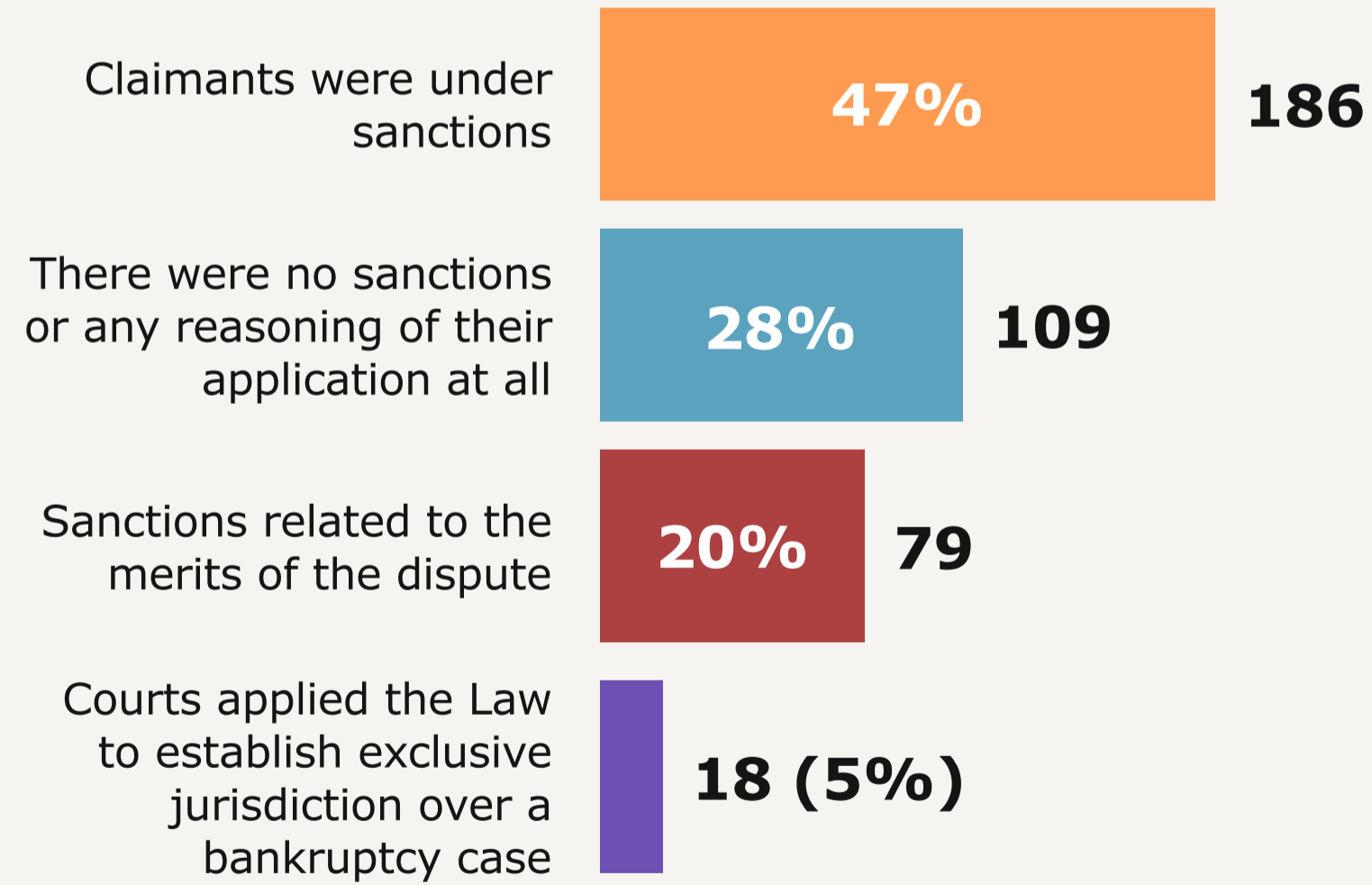
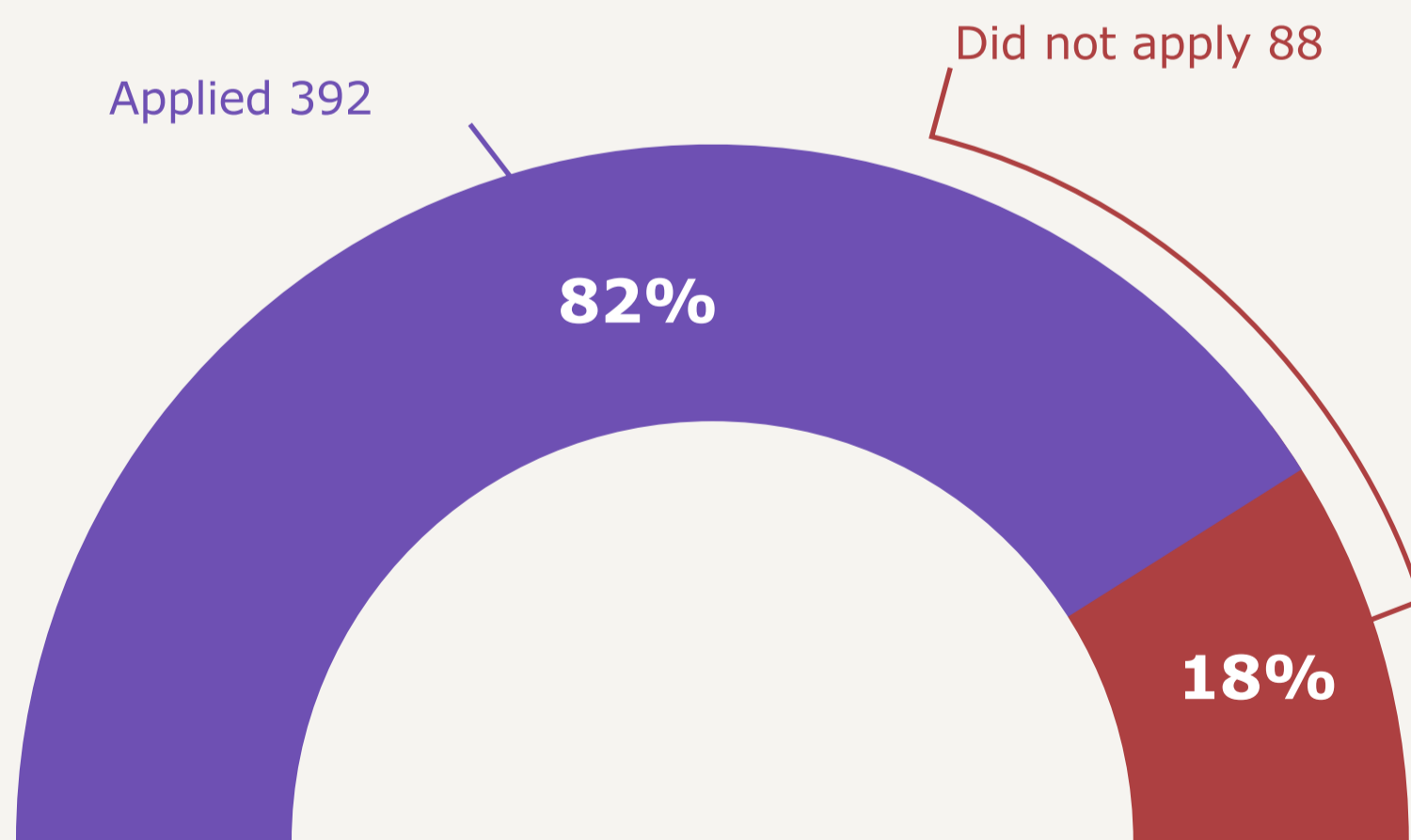


Statistics after the Russian Supreme Court's Position in Uralvagonzavod

All cases found on Lugovoy Law
480 cases

Courts applied Lugovoy Law
392 cases

Courts did not apply Lugovoy Law
88 cases



description of all 480 cases used for the statistics in Annex via [this link](#)

We have found 480 cases where Russian courts considered the application of Articles 248.1 и 248.2 of APC RF

	Russian arbitrazh (commercial) courts' exclusive jurisdiction (Article 248.1 APC RF)	A prohibition to initiate or continue foreign proceedings (Article 248.2 APC RF)
All cases	406	74
Subject matter	Russian arbitrazh (commercial) courts' exclusive jurisdiction under Article 248.1 of APC RF.	A prohibition (injunction) to initiate or continue foreign litigation or international commercial arbitration seated abroad.
Cases where the courts applied the provision	<p>327 cases:</p> <ul style="list-style-type: none"> • In 96 cases courts recognized the exclusive jurisdiction without sanctions against the claimants; • In 66 cases courts applied Article 248.1 of the APC RF because they established sanctions relating to the merits of the dispute; • In 18 cases courts relied on Article 248.1 of the APC RF to recognize the exclusive jurisdiction to consider bankruptcy cases of foreign companies; • In 4 cases courts relied on Article 248.1 of the APC RF to recognize the exclusive jurisdiction, although the dispute initially had to be resolved in Russia. 	<p>65 cases:</p> <ul style="list-style-type: none"> • In 13 cases the prohibition was granted without sanctions against the applicants; • In 13 cases courts applied Article 248.2 APC RF because of the sanctions in relation to the merits; • The only ruling, where the first instance court rejected an application for a prohibition upon analysis of the applicable sanctions, was quashed by the cassation court.

description of all 480 cases used for the statistics in Annex via [this link](#)

Cases where the courts did not apply the provision

79 cases:

- In 78 cases courts did not establish sanctions against a party to the dispute or found other formal reasons to decline the application;
- Only in 1 case did the court decline the application of Article 248.1 of APC RF, notwithstanding the restrictive measures that applied to the party to the dispute, upon analysis of its access to justice (the ruling was not quashed or appealed).

9 cases:

- In 8 cases the reason to decline the injunction was the absence of sanctions against the applicant (or other formal reasons);
- In 1 case the prohibition was not granted because the final arbitral award had been rendered.

After the the Russian Supreme Court's Ruling No. 309-ЭC21-6955 (1-3) dated 9 December 2021

- In 392 cases Russian courts applied Articles 248.1 and 248.2 of APC RF without proper analysis of the circumstances. Furthermore, in 109 cases Russian courts applied Articles 248.1 and 248.2 of APC RF without establishing any sanctions that would apply against the applicant.
- In 87 cases Russian courts declined the application of Articles 248.1 and 248.2 of APC RF just because a party was not under sanctions or due to other formal obstacles;
- In several cases Russian first instance court properly analysed the circumstances and applied Articles 248.1 and 248.2 of APC RF based on such analysis: only in one case the court's act has not been appealed or quashed.

description of all 480 cases used for the statistics in Annex via [this link](#)



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