

# When Gazprom Becomes Russia: Abuse of Rights and Corporate Separateness

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The February Dutch court [decision](#) in the dispute between a Ukrainian investor (DTEK Krymenergo) and Gazprom International provides an instructive example of how national courts can approach questions of corporate separateness, state involvement, and foreign law in the context of interim relief. I prepared several opinions on Russian law in this case and summarise in this post the key issues relevant to the dispute.

In the underlying dispute, the Ukrainian investor secured in 2023 an award against the Russian Federation from arbitration proceedings under UNCITRAL Arbitration Rules administered by the Permanent Court of Arbitration in the Hague. At the heart of the case in Dutch courts was a question of whether Gazprom International can rely on its separate corporate personality from the Russian Federation to resist attachment, or whether doing so may constitute an abuse of rights under Russian law.

The Dutch court held that it could not exclude the possibility — based on Russian law and expert evidence — that Gazprom International's reliance on its separate corporate personality might constitute an abuse of rights under Article 10 of the Russian Civil Code. It found that DTEK's recourse claim against Gazprom-linked assets was at least reasonably arguable rather than manifestly unfounded. While leaving the final determination to full proceedings, the court allowed the attachment to stand at this stage, signalling that corporate separateness of state-controlled entities may be disregarded where it is plausibly invoked in bad faith.

## Applicable law and expert evidence

The Court approached this issue of legal separation of Gazprom and the Russian Federation by first clarifying the applicable legal framework. It confirmed that Russian law governs the question of whether Gazprom International's separate identity should be respected, relying on the conflict-of-laws provisions of the Dutch Civil Code.

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A central aspect of the judgment concerns the treatment of expert evidence. Gazprom International challenged the weight given to my expert opinion, arguing that the analysis of Russian law offered by its own expert, advocate Mr Kuzmin, should prevail. Rather than focusing on the differences in terminology between the two experts, the court examined the substance of their positions. While Mr Kuzmin criticised the use of the term "piercing the corporate veil" as overly broad or imprecise, the Court observed that he did not fundamentally dispute the possibility that, under Russian law, a company could be held liable in situations where corporate separateness is abused.

My expert opinion emphasised the role of Article 10 of the Russian Civil Code, which prohibits abuse of rights and allows courts to impose appropriate consequences where legal structures are used improperly. My analysis demonstrated that Russian jurisprudence recognises circumstances in which the formal independence of a company may be disregarded, particularly where that independence is invoked in bad faith.

On the other hand, Gazprom's expert, while more cautious, accepted that Article 10 of the Russian Civil Code could play a role,

though he argued that, in that event, additional provisions, such as those governing tort liability, would typically be required. The Court interpreted this disagreement as one of emphasis rather than substance, noting that both experts acknowledged the existence of mechanisms under Russian law to address abusive reliance on corporate separateness.

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The procedural context proved decisive in shaping the Court's reasoning. Because the case arose in summary proceedings, the Court was not required to reach a definitive conclusion on the content of Russian law. Instead, it was sufficient to determine whether DTEK's position was plausible. This lower evidentiary threshold allowed the Court to focus on whether the claim of abuse of rights was reasonably arguable, rather than conclusively established. In this regard, the Court found that my opinion demonstrated that it is at least conceivable that Gazprom International could be abusing its legal independence:

4.24 ... the Court establishes that the answer to the question of whether Gazprom International is abusing its legal independence depends to a large extent on the circumstances of the case, as is evident from the opinions of both experts. The Court agrees with the preliminary relief judge that the validity of the right of recourse will ultimately have to be examined in the main proceedings. In any case, it cannot be established in these summary proceedings that DTEK's claimed right of recourse is summarily unsound, given that the opinions of Prof. Kryvoi show that it is at least quite conceivable that Gazprom International is abusing its legal independence under Russian law.

## The "abuse of law" under Russian law

The Court also addressed the argument that additional statutory provisions on tort liability were necessary to establish responsibility of a corporate entity. It rejected this line of reasoning, distinguishing between liability for damages arising from tort and the type of recourse claim at issue in the present case.

The Court held that it cannot be discounted that Gazprom International is abusing its legal independence under Russian law and that the validity of the claim must be examined in full proceedings. The Court took a pragmatic approach to preserve the possibility of substantive justice without prematurely resolving complex questions of foreign law.

## Impact on the enforcement of arbitral awards against the Russian Federation

The Russian Federation increasingly appears as a defendant in investor-state arbitrations, many of which arise out of its military operation against Ukraine, which began in 2014 and became a full-scale war in 2022. For example, according to UNCTAD's Investment Dispute Settlement Navigator, Russia faced five new investor-state claims in 2024 alone. However, the uncertain enforcement prospects of arbitral awards against the Russian Federation deter many investors from pursuing their claims.

In practice, many Russian state-owned or state-controlled enterprises hold substantial assets abroad, while the Russian Federation itself may have limited attachable property in certain jurisdictions. By accepting that, under Russian law, the doctrine of abuse of rights can justify disregarding corporate independence, the Court opens a pathway for creditors to argue that assets nominally belonging to such entities may, in substance, be used to satisfy state liabilities. In my opinion, even at the interim stage, the Court's recognition that this argument is "at least conceivable" lowers the threshold for claimants seeking to attach assets linked to state-controlled structures.

This court decision in *DTEK v Gazprom* shows a willingness of Dutch courts to look beyond formal distinctions between corporate entities and the State and engage with the functional role of legal doctrines such as abuse of rights under Russian law. As I demonstrated in my expert reports, Russian courts routinely pierce the corporate veil of entities controlled by businesses from "unfriendly" jurisdictions. I would not be surprised if courts in these "unfriendly" jurisdictions would reciprocate in relation to companies controlled from the Russian Federation.

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If courts in other jurisdictions adopt a similar approach, creditors could increasingly target assets of Russian major state-linked companies by demonstrating functional control, economic unity, or abusive reliance on legal separateness. This would mark a move away from strict formalism toward a more practical, substance-based approach, in line with general principles of good faith and preventing abuse found in Russian law, Dutch law and many other legal systems.

## Author

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