

Dutch Supreme Court annuls appeal court's decision upholding attachment against Kazakhstan's sovereign wealth fund

by *Practical Law Arbitration*, with *Van Oosten Schulz De Korte Advocaten*

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In *Kazakhstan and others v Stati and others* (ECLI:NL:HR:2020:2103), the Dutch Supreme Court annulled the appeal court's decision upholding an attachment of assets against Kazakhstan's sovereign wealth fund.

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The Dutch Supreme Court has annulled a decision by the Amsterdam Court of Appeal, rejecting an application to lift an attachment of assets belonging to Samruk, a sovereign wealth fund owned by Kazakhstan. In September 2017, Stati and others had obtained an order for attachment in order to enforce arbitral awards in the Netherlands awarding approximately USD 500 million in damages due to the expropriation of oil fields.

The Supreme Court ruled that the appeal court had incorrectly assumed that Samruk had invoked immunity from enforcement only in the event that the court ruled that Samruk could be considered one and the same party as Kazakhstan.

In addition, the Supreme Court ruled that the rationale for immunity from enforcement is that properties of foreign states are not subject to attachment and enforcement unless and to the extent that it is established that the properties have a purpose that is inconsistent with a public purpose (see *article 19, United Nations Convention on Jurisdictional Immunities of States and Their Property*). It is up to the party, wishing to attach assets of a foreign state, to substantiate and evidence that the assets are subject to attachment. The Supreme Court ruled that the appeal court had failed to acknowledge this requirement. Immunity from enforcement is not limited to assets that have an immediate public purpose. Without further explanation, it could not be assumed that the shares held by Samruk in a Dutch entity had a purpose other than a public purpose, as the income from the shares was intended to increase the national welfare of Kazakhstan.

The Supreme Court referred the matter to the Appeal Court in The Hague, which must now establish whether the shares held by Samruk in the Dutch entity qualify as "property" within the meaning of article 19(c) of the United Nations Convention on Jurisdictional Immunities of States and Their Property.

Case: Kazakhstan and others v Stati and others (ECLI:NL:HR:2020:2103) (18 December 2020).

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