

Court of Appeal in The Hague lifts attachment against Kazakhstan's sovereign wealth fund

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

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In *Samruk and others v Stati and others* (ECLI:NL:GHDHA:2022:977), the Court of Appeal in The Hague lifted an attachment by the Statis against shares in a Dutch entity held by Samruk, Kazakhstan's sovereign wealth fund.

Geert Wilts, Van Oosten Schulz De Korte Advocaten

Following the decision by the Dutch Supreme Court referring the matter to the Court of Appeal in The Hague (see [Legal update, Dutch Supreme Court annuls appeal court's decision upholding attachment against Kazakhstan's sovereign wealth fund](#)), the court lifted an attachment effected by the Statis against shares held by Samruk in a Dutch entity, because the shares were subject to immunity from enforcement.

First, the court considered that the attached shares belonged to Kazakhstan within the meaning of article 19(c) of the United Nations Convention on Jurisdictional Immunities of States and Their Property, because Kazakhstan exercised control over the shares. This was apparent as Kazakhstan remained the sole shareholder of Samruk by law, was authorised to transfer the shares held by Samruk in the Dutch entity, and could appoint and dismiss directors of Samruk. The court did not address the question of whether Kazakhstan and Samruk should be considered one and the same, which was heavily debated by the parties, because this was irrelevant to the application of the principle of immunity from enforcement.

The court then considered if the shares were specifically in use or intended for use by Kazakhstan for non- government, non-commercial purposes. The court could not establish this. After all, Samruk held shares in companies with the purpose of increasing the national welfare of Kazakhstan and Samruk could not transfer its shares without Kazakhstan's consent. Even if Samruk managed its shareholding in a commercial way, as the Statis argued, that could not change the fact that the purpose was to increase Kazakhstan's welfare, so that it was still considered intended for use by government for non-commercial purposes.

Lastly, the court ruled that accepting immunity from enforcement in this matter was not a disproportional limitation of the Statis' right to access to justice within the meaning of Article 6 of the European Convention on Human Rights and their right to peaceful enjoyment of possession within the meaning of Article 1 of the First Protocol, pursuant to case law by the Dutch Supreme Court, the European Court of Human Rights and the International Court of Justice.

The decision is another setback in the Statis' efforts to enforce the USD500 million arbitral awards obtained by them in the Netherlands, after the Dutch Supreme Court earlier ordered the re-hearing of the enforcement proceedings (see [Legal update, Dutch Supreme Court orders re-hearing of enforcement proceedings in favour of Kazakhstan](#)).

Case: *Samruk and others v Stati and others* (ECLI:NL:GHDHA:2022:977) (14 June 2022) (Dutch language) (SA Boele, D Aarts and BMP Smulders).

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