

Dutch Supreme Court sets aside decision upholding partial award accepting jurisdiction in favour of Crimean investors - Preview

by *Practical Law Arbitration*, with *OSK Advocaten*

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In *Russia v Everest and others* (ECLI:NL:HR:2024:1812), the Dutch Supreme Court set aside a decision of the Court of Appeal in The Hague, which had upheld a partial award accepting jurisdiction in favour of Crimean investors.

Geert Wilts, OSK Advocaten

The Dutch Supreme Court has set aside the decision by the Court of Appeal in The Hague, which had upheld a partial arbitral award that accepted jurisdiction in respect of claims by Everest and other Crimean investors based on the expropriation of their assets by Russia.

First, the Supreme Court ruled that the Russia-Ukraine bilateral investment treaty (BIT) was to be interpreted in good faith, in accordance with the ordinary meaning of its terms, pursuant to article 31(1) of the Vienna Convention on the Law of Treaties. On that basis, Crimea was held to fall within Russia's territory, for the purposes of the BIT, as a territory does not necessarily have to be a sovereign territory, and the purpose of the BIT was to encourage and protect investments in the member states.

However, the Supreme Court set aside the Court of Appeal's decision due to insufficient findings in relation to the ownership of several Crimean properties. For instance, Russia had argued that ownership of a resort was obtained based on a fake arbitral award, rendered two days after the underlying purchase agreement was concluded, which merited further consideration. In relation to another property, the Court of Appeal failed to assess whether a violation of administrative law could mean that the investment was illegal, within the meaning of the BIT. Further, for an apartment complex, the account should have taken of an expert report, which concluded that the apartments were obtained illegally.

The Supreme Court also set aside the Court of Appeal decision because it wrongfully rejected Russia's claim for revocation of the award. The three-month period to file a claim for revocation commenced when Russia actually obtained copies of judgments withheld in the arbitration, and not when those judgments were rendered and published.

However, the court found that the Court of Appeal had not violated the principles of due process vis-à-vis Russia and referred the matter to the Amsterdam Court of Appeal.

In decisions rendered on the same day, the Supreme Court confirmed decisions on similar BIT claims obtained by Naftogaz, Privatbank and Aeroport Belbek (see [Legal update, Court of Appeal in The Hague upholds partial award assuming jurisdiction in favour of Crimean investors](#)), upholding partial awards obtained by those investors.

Case: [Russia v Everest and others](#) (ECLI:NL:HR:2024:1812) (6 December 2024).

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